

UK Legal News Analysis

Is the legal profession embracing flexible working?

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Abstract

Practice Compliance analysis: Is the legal sector lagging behind in flexible working? Nicholas Lakeland, partner in the employment law team at, Silverman Sherliker LLP, London, discusses the barriers and potential solutions to offering truly comprehensive flexible working.

Analysis

Original news

Report: Increasing flexible working in the legal profession, LNB News 18/11/2013 125

Flexible working requests are made reluctantly, mostly out of necessity, and often met with reluctance, a study of lawyers at commercial law firms has found. The study, conducted by Fletcher Day LLP, found the majority of respondents believed that working flexible hours could adversely impact their career progression.

Is the legal sector lagging behind in flexible working?

Yes. Primarily because requests for flexible working are reluctantly made, because of the concerns of the individual lawyer of the perceived cost to their career prospects.

Lawyers tend to be expected to work long hours and the culture militates against flexible working. Clients expect their lawyers to be on tap at all times, valuing instant and easy access to their lawyers above all else, which of course directly contradicts the purpose of flexible working. Blackberrys, iPhones, and Android mobile telephones have all helped and hindered this because while they allow flexibility and you can be contactable away from the office, their use also means you are accessible 24 hours a day, seven days a week. This means you often might find yourself working even when you are away from the office--supposedly not working.

Why is there a perception in the legal sector that flexible working will harm your career prospects?

The results from Fletcher Day's report indicate the importance of job security and quality of work for individual lawyers. Lawyers are concerned that if they are not in the office either because they work part-time or because they are working from home, they will not be perceived to be working as hard as others and consequently, will not get the same quality work as those working in the office or those working longer hours in the office. Lawyers may not want to pass work to someone who is not in the office full time (either because they are working from home or because they work part-time). Instead, they will pass work to someone who is present in the office, even if the lawyer not working in the office may be better suited or qualified to carry out

the task/matter. The idea of 'out of sight, out of mind', can apply.

Career progression is also very important for lawyers--ie moving up the ladder from a trainee, to an NQ, to an associate, senior associate and partner (salaried and also equity). Consequently, lawyers are concerned that if they are not getting the same quality work as those based full time in the office, they are not getting the same experience and exposure to work and it will take them longer or it will be harder, for them to progress in their careers.

Could law firms be opening themselves up to discrimination claims for failing to offer flexible working or by limiting the careers of those who chose to take up flexible working?

Potentially--because both men and women can make requests under the Flexible Working Regulations. Employers generally tend to look more favourably on requests made by women, but if a law firm acts in this way, it could be exposing itself to claims of sex discrimination by a man. An example of this is if a request to work flexibly is not considered seriously because the request was made by a man, whereas the same request made by a woman would have been properly considered, then a claim of direct sex discrimination could succeed.

Indirect discrimination however, would be harder to prove. In the case of *Sinclair Roche & Temperley v Heard* [2004] IRLR 763, [2004] All ER (D) 432 (Jul), the Employment Appeal Tribunal rejected a claim that a full-time only policy had a disproportionate impact on female solicitors and highly-paid City women. Nonetheless, tribunals will be minded to accept that a woman who is required to work full time has been put at a disadvantage to her male peers. Even then, however, an employer can objectively justify a full-time working requirement. For example, a more senior female lawyer or a female lawyer in a highly paid position may find it difficult to challenge a requirement for consistent attendance over longer hours which can be justified by reference to the role she is needed to fulfil within the firm.

Are new business models offering greater access to flexible working?

Possibly the ABS model may result in client's perceptions changing and law being seen as a commoditised product which can be bought from any lawyer who happens to be in the office at the time the client calls. The difficulty with this approach is it weakens client relationships and clients become customers rather than clients. The jury is out on whether this model will deliver client satisfaction and long term relationships.

What are the barriers to offering truly comprehensive flexible working?

The office environment allows lawyers to discuss and share their thoughts on client matters, whether it's a new reported case or a particular matter they are working on. Working in the office gives lawyers an opportunity to see different perspectives of the law, which in turn makes them better lawyers.

The office will have all the resources they need to deal with matters quickly and efficiently--eg support staff, photocopiers/scanners/printers etc, as well as IT personnel to deal with any IT problems. This is particularly important when a client needs an issue dealt with urgently.

The legal profession is a competitive industry providing a service and consequently, law firms need to stay competitive by providing a top-notch service to clients. Clients too, expect a high quality service and want their lawyers to be available and on hand as and when they need them. When a lawyer is working part-time, a client may be disappointed or even frustrated at not being able to get hold of them on particular days of the week or hours of the day.

What should law firms be doing to address the issues raised in this report?

Firms should be:

- o improving technological resources to make it easier for people to work away from the office--eg setting up video links/Skype on office computers, providing lap tops or smart phones to employees, diverting calls to mobiles

- o training employees to log in remotely and access their emails from their smart phone, appear via video link/Skype when they are not working in the office

- o discouraging long working hours and encourage a good work/life balance which will decrease the stigma of working flexibly
- o ridding themselves of the stigma of presenteeism--eg by allowing employees to work from home when working on a particular project and may be beneficial (to avoid distractions)
- o addressing the issue of clients' expectations in trying to reach a part-time lawyer--law firms can set a policy whereby part-time employees still need to answer their work phone/check their emails regularly to ensure clients are still receiving a quality service

Interviewed by Diana Bentley.

The views expressed by our legal analysis interviewees are not necessarily those of the proprietor.

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