

Towards a more flexible workplace

By Lee-May Saw



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In theory it cannot be suggested that a sensible work/life balance is entirely impossible in the modern workplace. Today, the majority of employers offer flexible work arrangements of some description that can assist employees in achieving work/life balance, and employees who do not have standard rights to flexible work arrangements, have the option of negotiating with their employer on an individual basis. Theoretically speaking, the avenues are there.

However, the realities of today's workplace are sobering and must be taken into account. In particular:

- there is an imbalance in bargaining power between employer and employee;
- flexible work arrangements can be costly for employers to implement;
- statistics indicate that large proportions of respondents to surveys amongst the legal profession are unaware of the full range of flexible work options, and that employees who access these options are in the minority.¹

The realities of the modern workplace is something experienced by supporters of organisations such as the Women Lawyers' Association of New South Wales (WLA NSW), and a complex problem facing politicians, policy makers, social and law reformers. Real and significant barriers exist preventing employees from accessing flexible work arrangements, that would allow them to realise their expectations when it comes to work/life balance. A greater understanding of how an employee's expectations of work/life balance can be met can be gained from reforms that will allow for increased access to flexibility in the workplace.

The Concept of Flexibility

Whether the issue is work/life balance, work/family balance, or diversity in the workplace, the concept of flexibility is one that is commonly relied on as a solution to systemic imbalances in the workplace. Guides and articles about flexibility consistently equate the concept with:

- a range of work practices, including part-time work, job-sharing, working from home;
- condensed or compressed hours, and flexi-time (changes to daily start and finish times).²

Such an equation, in my view, has a tendency to promote a somewhat black and white definition of flexibility, which ignores several dimensions of the concept and of the complexity of the problems it is intended to remedy.

Flexibility is not only intended to provide for work/family balance; it is not only a 'female friendly' concept, nor is it only about work/life balance. There is an undeniable truth in statements from the numerous working women with 'unpaid work responsibilities' in the home, and employees with demanding study commitments outside of work, that the balancing act they routinely engage in is more about work/work balance than work/life balance.

The concept of flexibility, I suggest, is about equal opportunity for all employees. It refers to a range of work practices that allow an employee to balance his or her responsibilities within the workplace with the responsibilities, commitments and conditions that the employee is subject to as a result of factors external to the workplace—factors that actually or potentially have an impact

on the employee's performance of his or her responsibilities within the workplace. Relevant responsibilities, commitments and conditions that an employee might be subject to include any disability, illness, caring responsibility, religious commitment, or requirement for personal or career development.

The Significance of Work/Life Balance

The same general arguments that support the case for flexibility in the workplace establish the significance of work/life balance.

Attracting and Retaining Talent

A workplace that provides employees with satisfactory work/life balance is better placed to attract and retain talent.³ Using the legal profession as an example, the diversity of the legal workplace is something that stereotypes often underestimate. However, independent of their size or financial capacity, law firms, corporations, government bodies and community organisations, all rely heavily on the talent of their staff. Maintaining and retaining staff who are valuable for their skills, experience and corporate knowledge is a problem for modern employers. As a recent article in the *Sun Herald* put it:

'a job for life has little appeal in today's workplace, where employees change companies and careers every few years'.⁴

The head of the Human Resources Department at law firm Blake Dawson Waldron has conservatively estimated that replacing a lawyer with five or more years' experience costs the firm at least \$75 000.⁵ Other estimates argue that it costs \$120 000 to replace a lawyer with four years' experience.⁶

Improving Morale and Job Satisfaction

Allowing employees to achieve their expectations when it comes to work/life balance has the capacity to improve morale and job satisfaction.⁷ All the lawyers surveyed as part of the Law Society of New South Wales' 2004 study into flexible work practices agreed that

'being able to work flexibly had a positive bearing on how they viewed their firm and this translated into loyalty, commitment and diligence'.⁸

Improving Productivity

Research also indicates that there is:

- a positive correlation between work/life balance and the reduction of unscheduled absences from work; and
- a positive correlation between work/life balance and increased productivity.⁹

Reducing Stress and Burnout

Creating opportunities for employees to access options for a work/life balance allows employees to reduce their stress.¹⁰

The Law Society's Gender and Industrial Issues Taskforce 1999 found that:

'work-related stress among solicitors needed to be addressed because solicitors' health and well being is essential, not only for solicitors personally, but also for the quality of their services to clients; and because anecdotal evidence suggests that there is a positive correlation between work-related stress and the making of mistakes or ill considered decisions, giving rise to negligence claims and complaints'.¹¹

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Achieving Work/Life Balance

The reasons listed above serve as a strong testimony that current conditions of employment are not ideal for the kind of flexibility required for all employees to achieve sensible work/life balance. WLA NSW has recognised that:

'progress towards achieving a balance between paid and unpaid work in one area may be positively or adversely affected by other areas'.¹²

This applies equally to progress towards achieving a balance between work and life. Social policy, workplace and legal frameworks all play an elementary part in creating avenues for reforms that will allow this progress to occur.

Social Policy Reform

As the statistics indicate, two of the major barriers to sensible work/life balance becoming a reality in the modern workplace are:

- a lack of awareness amongst employees about the full range of flexible work options, and

△ ...such an Act could create a new category of unlawful discrimination on the ground of 'requirements for flexible work arrangements'...△

○ the lack of employees taking up flexible work options when they are available.¹³

Current government sponsored-awards, such as the Equal Opportunity for Women in the Workplace Agency Citations, and the Australian Chamber of Commerce and Industry/Business Council of Australia National Work and Family Awards, have encouraged the larger employers, who generally have the financial resources to compete for and receive such awards, to introduce and maintain flexible work practices that support work/life balance. However, increased government incentives and support encouraging employers and relevant agencies to develop and implement resources to educate employees about flexible work options and the significance of work/life balance, are an obvious answer to establishing a level of bottom line consistency across all employers, and changing the statistics in a constructive manner.

Workplace Reform

Employers who introduce and implement policies about the range of flexible work arrangements that they offer take a major step towards assisting their employees to achieve work/life balance. Introducing and implementing programs that address barriers to accessing flexible work arrangements are critical to changing a workplace culture that considers flexible work arrangements to be a 'soft option'. The 2004 study of the Law Society of New South Wales¹⁴ identified eight key factors which contribute to the success of flexibility within law firms:

- articulate and promote the value of flexibility;
- demonstrate leadership;
- provide support for supervisors;
- grow effective behaviours and attitudes in the employee working flexibly;
- develop a communication plan;
- identify barriers to flexibility and develop creative solutions;
- develop flexibility principles; and
- create the pathway for implementation.

Legal Reform

Last year, WLA NSW made a submission¹⁵ in response to *Striking the Balance: Women, Men, Work and Family*, a Discussion Paper issued by the Human Rights and Equal Opportunity Commission. In this submission, WLA NSW

supported views put forward by the Australian Law Reform Commission, which recommend that the provisions of the *Sex Discrimination Act 1984* (Cth) be adopted into a federal *Equality Act*.¹⁶ In addition to broadening the protections that apply to employees with family and caring responsibilities, such an Act could create a new category of unlawful discrimination on the ground of 'requirements for flexible work arrangements', and adopt terms similar to section 15 of the *Disability Discrimination Act 1992* (Cth) so that:

- (1) It is unlawful for an employer or a person acting or purporting to act on behalf of an employer to discriminate against a person **on the ground of the person's requirements for flexible work arrangements or any requirements for flexible work arrangements of any of that other person's associates**:
 - (a) in the arrangements made for the purpose of determining who should be offered employment;
 - (b) in determining who should be offered employment; or
 - (c) in the terms or conditions on which employment is offered.
- (2) It is unlawful for an employer or a person acting or purporting to act on behalf of an employer to discriminate against an employee **on the ground of the employee's requirements for flexible work arrangements or any requirements for flexible work arrangements of any of that employee's associates**:
 - (a) in the terms or conditions of employment that the employer affords the employee;
 - (b) by denying the employee access, or limiting the employee's access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment;
 - (c) by dismissing the employee; or
 - (d) by subjecting the employee to any other detriment.
- (4) Neither paragraph (1)(b) nor (2)(c) renders it unlawful for an employer to discriminate against a person **on the ground of the person's requirements for flexible work arrangements**, if taking into account the person's past training, qualifications and experience relevant to the particular employment and, if the person is already employed by the employer, the person's

performance as an employee, and all other relevant factors that it is reasonable to take into account, the person because of his or her **requirements for flexible work arrangements**:

- (a) would be unable to carry out the inherent requirements of the particular employment; or
- (b) would, in order to carry out the inherent requirements of the job, require services or facilities that are not required by persons without the **requirements for flexible work arrangements** and the provision of which would impose an unjustifiable hardship on the employer.

Protection from discrimination on the ground of requirements for flexible work arrangements is likely to play an important role in shifting some of the imbalance in power, between employer and employee, in favour of the employee who requires flexible work arrangements. Knowing that he or she is legally protected from discrimination on the ground of requirements for flexible work arrangements will provide the employee with a sense of security in taking up the arrangements he or she requires. It will also provide the employee with a legal remedy against the employer in the event that discrimination from the employer occurs.

Conclusion

Active and effective social policy, workplace and legal reform together can play a vital role in providing all employees with the means to realise a sensible work/life balance.

Endnotes

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3. The Law Society of New South Wales, *The Case For Flexibility, Delivering Best Practice in Integrating Work and Life in the Legal Profession: A Guide to Implementing a Flexible Workplace*, 17 February 2005, 9–10.
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9. Ibid
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15. Women Lawyers' Association of New South Wales, *Submission to the Human Rights and Equal Opportunity Commission – Striking the Balance: Women, Men, Work and Family Discussion Paper 2005*, 14 October 2005, 5, <www.womenlawyersnsw.org.au/index.asp?ID=8> at 23 April 2006, 3.
16. Ibid. 6; Australian Law Reform Commission, *Equality before the Law: Women's Equality*, ALRC 69 <www.austlii.edu.au/other/alc/publications/reports/69/vol2/ALRC69.html> at 8 April 2005.

△ Protection from discrimination on the ground of requirements for flexible work arrangements is likely to play an important role. . . . △