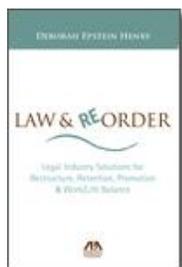


Conversations with the Experts

Law & Reorder: Legal Industry Solutions for Restructure, Retention, Promotion & Work/Life Balance



Deborah
Epstein Henry



Bio: Deborah Epstein Henry is a nationally recognized expert on workplace restructuring, talent management, work/life balance, and the retention and promotion of lawyers. She is the author of *LAW & REORDER: Legal Industry Solutions for Restructure, Retention, Promotion & Work/Life Balance* (ABA, 2010), a book selected by Above the Law in 2010 as one of the top 12 books to read. *LAW & REORDER*, has also been endorsed by 25 leaders, including general counsels, managing partners, law school deans, bar and women association leaders, legal industry experts, and career and work/life experts. In just four months, *LAW & REORDER* is in its second printing.

A former practicing litigator, Debbie is President of Flex-Time Lawyers LLC, a national consulting firm she founded in the late 1990s. Her firm is best known for running Best Law Firms for Women with *Working Mother* magazine - a national survey to select the top 50 law firms for women and report on industry trends. In 2010, she founded the Law & Reorder™ consulting practice, providing advisory, training and speaking services on workplace restructuring, talent management, work/life balance, and the retention and promotion of lawyers. Debbie has garnered visibility for her work from *The New York Times*, NBC Nightly News with Brian Williams, *The Wall Street Journal*, National Public Radio, *The National Law Journal*, among numerous others. She is an ABA Commission on Women in the Profession Liaison, a New York State Bar Association Committee for Lawyers in Transition Consultant, a Law360 Advisory Board member and an Honorary Advisory Board member of Pace University School of Law's New Directions program. Debbie received her B.A. in Psychology from Yale, her J.D. *cum laude* from Brooklyn Law School, and she clerked for Judge Jacob Mishler in the United States District Court for the Eastern District of New York. For more information, please visit www.lawandreorder.com and www.fleximelawyers.com.

An Interview with Deborah Epstein Henry
by Judi Casey

What is the impetus for designing work/life–friendly environments and employers?

There are a number of converging factors that evidence that work/life balance is a growing priority in the workforce. These factors include the fact that the lawyers clamoring for work/life balance have expanded and changed. It is no longer just a stigmatized group of working mothers.

Generation Y is making work/life balance a gender- and reason-neutral priority, meaning that men and women are prioritizing work/life balance for reasons besides parenting. Additionally, some baby boomers, who comprise 70% of law firm partners, are looking to phase into retirement over 5 to 10 years, working a flexible or reduced schedule.

Along with the growing work/life demands of the talent pool, technology has given lawyers the ability and desire

to work differently, and the globalization of work has created an expectation of 24/7 flexibility that needs to be mutual. Some employers are still ignoring these talent pool needs. But when the talent gap returns in 2018—as experts predict it will—employers will no longer be able to afford to deny them. Given the changing work/life factors and demands, the key to designing a work/life–friendly workplace is to create an environment that is work/life friendly for men and women for reasons in addition to parenting.

The billable hour seems to be the core of law firm operations. What are your thoughts on how to rethink hours and profits?

There is an increasing recognition that the billable hour no longer works and that the traditional law firm model is broken. The economic downturn expedited this realization for many. Much of the push has come from clients who are showing less loyalty and demanding more value and predictability in fees.

Alternative fee arrangements are a big part of the answer. What is important, though, is that when clients and law firms talk about alternative fees, they are talking about real alternative fee arrangements.

The most popular among these are fixed fees tied to a success fee or bonus, a retainer or a contingent fee. These alternative fee arrangements create predictability for clients and reward results and efficiency, rather than hours billed. Also, importantly, they align client and law firm interests and create a sharing of risk.

In contrast, alternative fee variations off the billable hour, like discounts, blended or frozen rates, and fee caps, among others, do not promote the benefits of real alternative fee arrangements. They do not promote efficiency, and there is a risk that matters will be staffed with lower-caliber or less experienced lawyers.

It is important to recognize that alternative fee arrangements are more challenging to implement with complex matters. However, with periodic review, pricing broken down by the stages in a matter, and clients and law firms that have a history of dealing with each other, such arrangements can be successfully achieved.

Please discuss your areas of focus for an employer that wants to become work/life–friendly.

Many make the mistake of thinking that a work/life friendly employer is just one that has a good part-time worker policy. However, the focus needs to be much broader than that. When I assess whether an employer is work/life–friendly, I look at the culture more generally to see if the environment is hospitable. This includes looking at key work/life features, including reasonable hours, vacation, parental and other leaves, childcare and eldercare offerings, re-entry policies, flexible and reduced hours, and phased retirement programs.

It is important for employers to have written policies addressing each of these work/life areas. However, the written policy is just a starting point. Usage rates of the policies are the true reflection of whether the policies are viable. It is important for an employer to compare its usage rates to industry usage rates broken down by city and nationally. It is also important to assess the individuals who are availing themselves of the policies and why. Is it men, in addition to women? Is it partners or senior managers, in addition to associates and junior employees? Are lawyers using the policies for reasons in addition to parenting? These comparative usage rates will shed light on the culture and whether an environment is actually work/life–friendly.

Your company, Flex-Time Lawyers, runs the Best Law Firms for Women initiative in collaboration with Working Mother magazine. Can you detail some of the findings from your data?

In the Best Law Firms for Women initiative, we report aggregate data from our 50 winning firms. The Best Law Firms for Women data reflects that while our winning firms exceed the national averages, there is still much more work to be done to improve the status of women and work/life balance in the legal profession. This is particularly evident when legal industry statistics are compared to other industries. For example, the national average of law firm lawyers working reduced hours is 6%; the Best Law Firms for Women average for 2009 is 8%; and the Bureau of Labor Statistics average for comparable industries such as medicine, engineering, and architecture is 14%.

Our numbers also show that, generally, the offerings at the more women-friendly firms are generous. For example, 96% of our winning firms offer reduced hours policies and our winning firms offer, on average, 14 weeks of paid maternity leave. However, the usage rates are low, reflecting the prevailing stigma that persists in the legal profession. Additionally, our numbers reflect a higher than industry average of women in leadership positions. But, yet again, the numbers reflect the need for considerable improvement. For example, the national average of female equity partners is 16%, while the Best Law Firms for Women average is 20%.

In your book, *Law & Reorder*, you describe your “Cheat Sheet.” How does it guide women law students to select a women-friendly work environment?

The Cheat Sheet is organized around six sections with questions under each topic area that identify an employer’s commitment to women’s retention and advancement. The first section, “Statistical and Background Information,” lays the foundation. Each of the next five sections reflect an area where women need to focus. These include Partnership & Advancement, Leadership & Accountability, Business Development & Networking, Workplace Flexibility, and Mentoring.

The Cheat Sheet is intended to be used by women law students during the process of deciding where to work—when they are contemplating where to apply, when they are evaluating callbacks, and when they are weighing offers. The questions in the Cheat Sheet are used to identify key issues on each topic, and the answers provided are indicia of whether the environment is women-friendly.

Although the Cheat Sheet was initially conceived as a guide for law students selecting an employer, its use has become broader. It has become a guide for practicing lawyers to assist them when contemplating lateral moves. For legal employers, the same questions have been used as a checklist to determine their strengths, weaknesses, and gaps to improve the role of women. Additionally, the Cheat Sheet provides tips for legal employers and law schools. There is also a resources section at the end that lists key online sources providing information on work/life balance, women’s issues, and diversity in the law.

What are the implications of your findings and suggestions for other professions?

The recommendations that I make to redesign the way work is done in law can easily be translated to other industries. While my book is geared toward legal employers, lawyers, and law students, I have found in my work that the issues prevail for all professionals. The ideas and strategies provided in my book can and should be applied to individuals and employers across industries.

Additionally, my book is broken out into Parts I and II. Part I is directed to legal employers and why and how they should restructure. Part II is directed to lawyers and law students and provides advice on how to develop the skills needed to thrive in today’s legal environment. In restructuring the workplace, employer representatives must understand the concerns and issues raised in Part II, because the management of today’s talent pool must be integral to any employer’s strategic plan. Similarly, as lawyers and law students learn and apply the skills taught in Part II, they need to understand how the steps they take will resonate in today’s legal environment as explored in Part I. Other industries that are focused on change should similarly focus on both the employer and individual perspectives to better align their key stakeholders’ interests and objectives and to create a more profitable, productive, and hospitable work environment.

What are your hopes for the legal profession?

My hope for the future of the legal profession is real change. That legal employers, instead of competing by duplicating each other’s moves, will compete by innovating and developing different models of legal practice. *The difference is that legal employers’ decisions would be dictated by initiative rather than reaction.* The survival of the fittest would then be based on what better models of practice evolve that meet the business needs of employers and clients and the performance and satisfaction needs of lawyers.

The result of the evolution will ideally be a variety of legal practice models that lawyers can choose to practice

and clients can choose to employ. Clients will be given more choices in how they will have their business needs met, and lawyers will have different pathways to achieve success in the private sector as well as in the public sector. Developing a variety of models of legal practice and giving more choices to clients and lawyers will improve profitability, productivity, and satisfaction in the profession. By providing more choice, the profession will be able to better align interests, skills, and business needs.

Competition to produce a variety of legal models to create profitable and hospitable workplaces, reasonable and predictable fees, and productive and satisfied lawyers are the goals the profession should seek. The future lies in our collective willingness to welcome a reorder.

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