Parenting and the Legal Profession

A Model for the Nineties

A Report of the Boston Bar Association Task Force on Parenting and the Legal Profession
The Boston Bar Association Task Force on Parenting and the Legal Profession grew out of a recognition that the issue of balancing work and family life is of deep concern to lawyers and law firm support staff who have children, and out of the recognition that a law firm's policies in this area have a profound effect on its ability to attract and retain the most desirable work force. Indeed, many Boston area law firms, like firms nationwide, are formulating policies to address issues related to the family responsibilities of their employees. This Report of the Boston Bar Association will, we hope, assist in those endeavors.

The Task Force acknowledges with respect the efforts of many law firm employers in addressing employees' concerns and interests in the four benefit areas addressed in the Report—specifically, parental leave, part-time work, child care services and child care tuition assistance.

The Task Force also wishes to recognize with deep appreciation the efforts of a great number of people who contributed immeasurably to the work of the Task Force.

Rudolph F. Pierce, president of the Boston Bar Association from 1989 to 1990, initiated the Bar Association project to address issues concerning the employees of law firms who are parents. His imagination, support and leadership were critical to the success of the Task Force.

John P. Driscoll, Jr., the current president of the Boston Bar Association, endorsed the project of the Task Force from the start of his tenure, reflecting the Association's continued enthusiastic commitment to the project.

The members of the senior staff of the Bar Association have been a steady source of unflagging support—and of effort. Francis S. Moran, Jr., Executive Director, new to Boston and to the Bar Association, has from the time of his arrival facilitated and expedited the work of the Task Force. Barbara Powers, Director of Membership Development, shared with the Task Force her energy, ideas and commitment to the issues. Among other things, she did much of the organizational work that enabled two focus groups to take place, and conducted an informal survey of Boston law firms' relevant employment practices. Veronica Ward, Deputy Development Director, undertook the detailed work of preparing the Report, in camera-ready form, for printing. Bonnie Sashin, Director of Communications, attended Task Force meetings, assisted the Task Force in its lengthy deliberations, and provided the Task Force with her invaluable expertise and insight.

Over twenty lawyers from small law firms, secretaries and law firm administrators took several hours from their busy schedules and participated in separate focus groups, one of lawyers and one of secretaries and administrators, in which the Task Force previewed an early version of its recommendations. Each of these individuals shared with the Task Force perspectives and experiences without which the Report could not have been written.

Colquitt Meacham planned and conducted the focus group meetings. Her invaluable skills as a lawyer and professional group facilitator were donated to the Task Force.

A sizable group of employment, pension and tax lawyers from Ropes and Gray convened with several members of the Task Force to answer employment-law related questions and to review certain of the recommendations of the Task Force with expert eyes.

The Task Force met as a whole—every two weeks for almost one year—and, additionally, in subcommittees, one for each of the four areas addressed by the Report. Some of the subcommittees further informed and enhanced their deliberations by including non-Task Force members among their numbers. Amy Ginsburg, Maureen A. Shea and Eric R. Allon joined the subcommittee on child care services, and Linda Mills, Vincent J. Pisegna and Lynn Girton participated on the child care tuition assistance subcommittee; their perspectives enlarged the horizons of the Task Force.

Kati Roessner of R&B Graphics in Mystic, Connecticut donated her much-needed skills as a graphic designer. Her patience with the artistic forays of the Task Force matched her professional talents.

The law firms whose members served on the Task Force, Goulston and Storrs in particular, and the other employers of Task Force members, made enormous contributions to this project.

For your efforts, imagination and support, we thank you all.

The Boston Bar Association
Task Force on Parenting
and the Legal Profession
INTRODUCTION

In November, 1989, the Boston Bar Association established a Task Force to explore and make recommendations with respect to employment policies at law firms for employees who are parents. The Report that follows is the result of numerous discussions with legal employees, investigation of existing (or nonexistent) policies at law firms, the presentation of preliminary recommendations to specially constituted focus groups that confirmed or suggested changes to the recommendations, and extensive discussion and deliberation on the part of both the subcommittees of the Task Force and the Task Force itself.

The Task Force recognizes that a revolution has taken place in the legal profession in the past two decades: in a field previously dominated almost exclusively by men, the number of women admitted to practice has expanded rapidly. The focus of the Task Force was not limited, however, to policies applicable solely to women; although parental leave and part-time policies continue to have the greatest impact on women, an increasing number of men are assuming, if not primary responsibility for their children, at least greater responsibility for child care and other family obligations. While the growing numbers of women in the legal profession have demanded implementation of policies that address the specific requirements of maternity leave, the Task Force recognizes that child care is not limited to infants or very young children, and that maternity policies and day care provisions for infants and young children alone are insufficient to address the needs of parent employees.

The BBA Task Force considered four general areas and has made recommendations with respect to each: parental leave, part-time and flexible work schedules, child care tuition assistance, and child care services. Some of the recommended policies are addressed specifically to the needs of lawyers. Others are addressed to all legal employees who are parents of minor children. The Task Force recognizes that the contributions of and demands made upon non-lawyer employees of law firms necessitate thoughtful policies to address their family needs, as much as do those of lawyers.

The Task Force emphasizes that policies that provide for parental leave and part-time or flexible work schedules as a matter of right are the most visible and important signs of the commitment of legal employers to supportive benefits for parent employees. Particularly because of the large numbers of women who have graduated from law school and been admitted to the bar, it has become imperative that legal employers implement policies that are supportive of parent employees. Recent evidence suggests that law firm employers have been less receptive than their corporate counterparts to implementing policies that encourage the long-term employment of professional women. The challenge to retain women lawyers is important for law firms, but the record to date is not impressive. The Task Force concurs with those studies that have found that the conflicting demands of family and profession account in large measure for the high "drop out" rate among women.

The Task Force takes note of recent suggestions that more flexible work practices and career opportunities will pay for themselves, even if all that is accomplished is a reduction in turnover. The cost to legal employers of replacing experienced lawyers and employees, taking into account recruitment costs, the time spent training and the loss of efficiency during training, is significant. From a cost-benefit point of view alone there is a compelling reason for legal employers to take seriously the family obligations of

1 The Boston Bar Association notes with particular respect the 1989 report of the Women's Bar Association of Massachusetts entitled "Parental Leave and Part-time Employment: A Report on a Survey of Massachusetts Legal Employers."

2 Today, approximately 20 percent of the legal profession consists of women, compared to only three percent 20 years ago. The percentage continues to rise.

3 While women have been hired as associates in large numbers for more than a decade, the number of women who become partners continues to be far lower than their numbers should dictate. The American Bar Association Commission on Women in the Profession reported in 1988 that only six percent of partners in all private law firms were women. A more dramatic finding came from a 1988 survey by the National Law Journal of the nation's 247 largest firms: only 20 percent of all new partners elected at the surveyed firms since 1986 were women—although based on the percentage of women in the relevant classes joining the same firms the number should have been closer to 40 percent.
their employees and adopt policies that are not inimical to those obligations.

The recommendations of the Task Force, however, are not the result simply of a cost-benefit analysis; rather, they are proposed in the context of several guiding principles. First, all legal employers have a responsibility to their parent employees to implement policies that will maximize the contribution of those employees consistent with their parenting obligations. Second, legal employers, like others in our society, have an obligation to adopt policies and implement strategies that are not antithetical to families in general and children in particular. Legal employers cannot turn a blind eye to the crisis that is growing for children in our society. They must recognize that private practices that penalize employees for meeting their parenting obligations are unacceptable. Third, the Task Force recognizes that the obligation to provide reasonable and workable solutions to the competing demands of families and law practice fall both on the employer and the employee: considerable flexibility is required of both. While legal employers cannot continue to have employment policies that penalize women, in particular, because of child care responsibilities, parent employees must recognize that there are considerable constraints, financial and other, that will determine the extent to which legal employers can develop policies that are supportive of family requirements. Finally, child care and other family demands are not limited to the first few years of a child’s life. The Task Force discovered that policies developed to date by legal employers have tended to focus on maternity leave or child care options for very young children. Older children and adolescents, however, frequently make demands on a parent employee that are sufficiently compelling to give rise to the need for flexible and part-time work arrangements. Part-time work needs to be acknowledged as a long-term issue, and made available to parents through a substantial portion of their children’s teenage years, not just until kindergarten.

The recommendations of the Boston Bar Association Task Force are not comprehensive. They recognize that a large law firm of 250 lawyers has concerns and limitations that are different from those of a two- or three-person law firm. The recommendations that are reflected in this Report cannot be adopted by every legal employer. It is our hope that legal employers will use these recommendations as a guide to develop, to the maximum extent, policies that are supportive of the family obligations of all of their employees.
SUMMARY OF RECOMMENDATIONS

The Task Force recommends to law firm employers the following model policies applicable to part-time work, parental leave, tuition assistance for child care purposes and provision of child care services. These policies are outlined here in summary form, for ease of reference; the Task Force urges readers to turn to the text of the Report, which presents the rationale for and in some instances alternatives to each recommendation.

1. PARENTAL LEAVE
   - that the parental leave benefits proposed below be made available to employees who have worked at the law firm for at least one year, and that employees who have worked at the firm for less than one year but more than the statutory minimum period be provided with such leave as is required by law;
   - that law firms make available to all female employees a paid leave of twelve weeks upon the birth or adoption of a child;
   - that law firms make available to all male employees a paid leave of four weeks within one year of the birth or adoption of a child and that, if the male employee is the primary caregiver of the child, the paid leave be extended for eight weeks to constitute a total of twelve weeks of paid leave;
   - that any employee who is the primary caregiver of a child be permitted to extend his or her parental leave on an unpaid basis for up to an additional six months following any paid parental leave;
   - that any employee who is the primary caregiver of a child and who is returning to work from a period of parental leave be permitted to resume work for an initial month on a part-time schedule agreeable to the employee and to the law firm;
   - that law firms provide parental leave benefits with the expectation that an employee’s entitlement to or eligibility for consideration for available raises, bonuses, seniority, admission to partnership and other advancement not be affected if the cumulative parental leave does not exceed one year;
   - that law firms emphasize to employees the need for early communication as to the timing and duration of a leave;
   - that health, hospitalization, disability, life and other insurance and pension benefits be continued during any period of parental leave, whether paid or unpaid, but that the accrual of sick leave, personal time and vacation time during the period of any unpaid parental leave be at the law firm’s discretion;
   - that an employee with an allocated amount of sick time be permitted to use the time for the care of a temporarily ill child.

2. PART-TIME WORK
   - that law firms encourage lawyers to work full-time for approximately two years, in their primary area of practice, before assuming a part-time schedule;
   - that law firms permit any lawyer who wishes to do so in order to care for his or her child or children to work no less than 80 percent-time, with the expectation that eligibility of associate lawyers for partnership will not be delayed;
   - that law firms permit any lawyer who wishes to do so in order to care for his or her child or children to work between 60 percent and 80 percent of full-time for one year, with further annual extensions available at the firm’s discretion where feasible in terms of the needs of the firm or practice group, and with the expectation that consideration for partnership will occur at a time consistent with the lawyer’s professional development;
   - that, where feasible in terms of the needs of the firm or practice group, law firms permit any lawyer who wishes to do so in order to care for his or her child or children to work less than 60 percent-time;
   - that, at the end of each year, law firms review the actual number of hours of a lawyer who works part-time, and increase compensation where the lawyer has worked substantially more hours than would be expected in light of his or her part-time arrangement;
   - that law firms consider offering certain of their regularly provided employee benefits on a pro-rated basis to lawyers, secretaries and other staff who work less than full-time;
☐ that, where feasible, law firms permit and facilitate job-sharing for secretaries and other staff;

☐ that, where feasible, law firms permit secretaries and other staff to work on a flexible schedule.

3. CHILD CARE SERVICES

☐ that law firms offer child care resource and referral services to all employees;

☐ that law firms provide their employees with emergency back-up child care after an assessment of the most appropriate method(s) for doing so;

☐ that law firms consider, where feasible, the option of providing regular child care in an on-site center.

4. CHILD CARE TUITION ASSISTANCE

☐ that law firms make available to all employees a dependent care assistance plan ("DECAP") under section 129 of the Internal Revenue Code;

☐ that, in addition to offering DECAP, law firms offer child care tuition assistance to all employees who have been employed for at least one year and whose annual family income does not exceed $60,000.
The parental leave policy of a law firm historically has been the most visible signal to its employees and potential employees as to the nature of its commitment to supportive benefits for parent employees. This is true for several reasons: some minimum leave, at least for mothers at the time of the birth of a child, has long been recognized as a practical if not a legal necessity; far more parents, again chiefly mothers, have been affected by parental leave policies than by other family-supportive policies; the widespread availability of some maternity leave has made a firm’s policies in this regard a convenient and meaningful measure of its hospitality to parents.

It is appropriate that a firm’s parental leave policy should be among the most visible of its benefits, central to its support of parenting and child-rearing. Few events rival the birth or adoption of a child in terms of the impact on a family. Firms have accommodated, with some period of maternity leave, the needs of mothers imposed by the physical and emotional demands of childbearing. Increasingly, this society and its employers, informed by relatively recent psychological research and teaching, have extended these leaves consistent with the understanding of the importance of bonding between both parents and infant.

The Task Force approves and applauds the direction many firms have taken towards parental leave policies that make paid leaves longer in duration than the leave required by Massachusetts law,¹ available to both mothers and fathers. Further, in the view of the Task Force, generous parental leave policies are an important and effective means of recruiting and retaining lawyers and all other staff. Employees who are afforded generous parental leave benefits and who view their employers as supportive of family commitments and obligations are far more likely to be committed, in turn, to those employers.

¹ Massachusetts law, c. 149, §105D, requires in part that all employers, as defined in M.G.L. c. 151B, §5, provide a female employee who has completed the employer’s probationary period or, where there is no such period, three months of consecutive full-time employment, eight weeks of maternity leave for the purpose of the birth or adoption of a child, to be paid or unpaid at the discretion of the employer. The adoption provision refers to a child under 18 or under 23 if the child is mentally or physically disabled.

The Task Force also believes that firms will benefit from generous and flexible parental leave policies that attempt to maximize stability and certainty with respect to the return of an employee to work and the timing of that return.

This portion of the report of the Task Force is written with lawyers, secretaries, support staff, mothers and fathers alike, in mind. While recognizing that law firms are relatively hierarchical institutions, the Task Force proceeds in the area of parental leave in the belief that the needs of infants and families do not change with their parents’ employment category. While aware that the market forces and job requirements that affect employment practices for lawyers are vastly different from those affecting other staff and will inevitably, in the foreseeable future, result in some differentiation of employment practices by employment category, and while also aware that the demands made on lawyers and secretaries upon their return to work after a parental leave are different, the Task Force leans in its recommendations towards policies that recognize that the experience of parenting a new child transcends employment categories.

Proceeding from these views, and recognizing, as well, that firms and practice groups of different sizes and areas of specialization will inevitably find different arrangements workable, the Task Force makes the following recommendations with respect to law firm parental leave policies. The Task Force urges law firms to keep in mind, whatever the details of the firm’s particular policy, that the policy should be conceived and administered in the spirit of a commitment to the needs of young children and new parents.

□ THE TASK FORCE RECOMMENDS THAT THE PARENTAL LEAVE BENEFITS PROPOSED BELOW BE MADE AVAILABLE TO EMPLOYEES WHO HAVE WORKED AT THE LAW FIRM FOR AT LEAST ONE YEAR, AND THAT EMPLOYEES WHO HAVE WORKED AT THE FIRM FOR LESS THAN ONE YEAR BUT MORE THAN THE STATUTORY MINIMUM PERIOD BE PROVIDED WITH SUCH LEAVE AS IS REQUIRED BY LAW.

M.G.L. c. 149, §105D, as noted above, requires that a female employee who has
completed an initial probationary period or, in the absence of a probationary period, has completed three consecutive months of full-time employment with the same employer, is entitled to an eight-week leave, with or without pay at the discretion of the employer, upon the birth or adoption of a child. Law firms must, of course, comply with these requirements.

The Task Force believes that, with respect to the issues of duration of leave, compensation and the provision of benefits to fathers, this statute is inadequate. However, in an attempt to take into account the serious financial burdens that benefits impose on employers, and to balance, as well, the subjective sense that longer-term employees have a greater entitlement to generous benefits, the Task Force recommends that the parental leave benefits that it proposes below be available after a one-year qualification period. Unlike the state statute, the recommendations of the Task Force are not contingent on a history of full-time work during the qualification period.

As a subsidiary matter, the Task Force suggests that law firms communicate clearly to employees who indicate an intention to take a parental leave that parental leave benefits are available to employees who have a decided intent to return to work after the leave. Although it is not hard to imagine a parental leave policy that makes leave available to employees in consideration of past contributions made to the firm, without regard to the employees' intention to return to work after the leave, the underpinning of the recommendation of the Task Force is that parental leave should be available to employees who intend to return to work, and that one of the important purposes of the leave is to guarantee the availability of employment for some period subsequent to the birth or adoption of a child. Both in written policies and in communications with expectant parents, the Task Force suggests that firms make clear that parental leave benefits are available only to employees who intend to return to work.

Nevertheless, the Task Force is fully aware that absolute certainty as to work commitments following the birth or adoption of a child is not given to expectant parents, and the Task Force does not recommend that employers impose a standard of certainty on the availability of parental leave benefits. In any event, more frequently than not, either financial constraints or professional goals, apparent before the beginning of the paren-

The Task Force considered but rejected the suggestions that employees be required to commit in writing, as a condition of receiving parental leave benefits, to returning to work, or that compensation for the leave period be withheld until the parent returns. The first of these two approaches seems unnecessarily rigid, possibly offensive and, as a practical matter, unlikely to be enforced. The second would undoubtedly result in substantial hardship in many situations. It is the belief of the Task Force that employee benefit policies that are perceived as generous and supportive and that are administered in a spirit of trust will generate a norm in the workplace that will discourage intentional manipulation of the system.

☐ THE TASK FORCE RECOMMENDS THAT LAW FIRMS MAKE AVAILABLE TO ALL FEMALE EMPLOYEES A PAID LEAVE OF TWELVE WEEKS UPON THE BIRTH OR ADOPTION\(^2\) OF A CHILD.

The Task Force found that a paid leave of eight to twelve weeks for lawyers is not an uncommon parental leave benefit among the larger Boston firms.\(^3\) The Task Force views a twelve-week paid maternity leave period as appropriate where feasible. In proposing a twelve-week paid maternity leave the Task Force proceeds on the assumption, which squares closely with reality, that a mother at

\(^2\) The Task Force uses the word "adoption," throughout, to refer to adoption that occurs contemporaneously with the new addition of a child to the household. Thus, the recommendations do not provide for a leave where, for example, a foster child who has been living with the family for some time is adopted.

\(^3\) While this Task Force Report principally addresses proposed policies for the private bar practicing in Boston, relevant statistics were not readily available that were limited to this population. The most recent available data arise from the 1990 Economics of Law Practice Survey sponsored by the Massachusetts Bar Association and Massachusetts Lawyers Weekly, conducted by STS, Inc. (results reported in the September 24, 1990 Massachusetts Lawyers Weekly). Three thousand MBA members in different sectors of the legal community were surveyed; 764 responded. The Survey indicates that a third of women lawyers report that they are entitled to some period of paid parental leave.

The 1989 Report of the Women's Bar Association of Massachusetts entitled "Parental Leave and Part-time Employment: A Report on a Survey of Massachusetts Legal Employers," reflects the policies of a range of legal employers within Massachusetts. The WBA surveyed 214 legal employers, of which 110 were private firms, and received 95 responses, 54 of which were from private firms. The report indicates that, in addition to the 17 legal employers whose maternity leave policies provide pay in accordance with their disability policies, 28 legal employers of various types provide paid maternity leave of two to three months.
home with a newborn is, in the overwhelming majority of cases, the child's primary caregiver.

The Task Force recognizes and emphasizes that, especially for those employees who are not compensated as highly as lawyers, the paid period of a leave may, as a practical matter, be the only leave that the employees can afford. Additionally, the employee—and this applies equally to male and female employees—should be permitted to use accrued vacation and personal time to extend the paid leave.

The Task Force also received substantial input, primarily from small and medium-sized firms, that twelve weeks of paid leave is unaffordable. While the Task Force views the proposed twelve-week duration of leave for female employees as absolutely minimal, it recognizes that not all firms can afford full pay for employees who are absent for this period. The Task Force urges firms to make every effort to provide employees with full pay during the initial twelve-week leave period and to provide employees with partial pay where full pay is not feasible.

☐ THE TASK FORCE RECOMMENDS THAT LAW FIRMS MAKE AVAILABLE TO ALL MALE EMPLOYEES A PAID LEAVE OF FOUR WEEKS WITHIN ONE YEAR OF THE BIRTH OR ADOPTION OF A CHILD AND THAT, IF THE MALE EMPLOYEE IS THE PRIMARY CAREGIVER OF THE CHILD, THE PAID LEAVE BE EXTENDED FOR EIGHT WEEKS TO CONSTITUTE A TOTAL OF TWELVE WEEKS OF PAID LEAVE.

On the assumption that eight weeks is a reasonable maternal disability period in the context of a normal pregnancy and childbirth, this proposed policy views eight weeks of the suggested twelve-week paid maternity leave period as a period of disability. Thus, the remaining four weeks of a twelve-week paid leave period would be made available for fathers. The Task Force reiterates that, as with female employees, paid leave may often, in reality, be equivalent to total leave. Additionally, the Task Force suggests, in view of the fact that an infant's mother will most often be the primary caregiver during the initial weeks or even months, that the paternity leave be available at any time during the child's first year.

Although fathers will never incur the actual physical disability that mothers sustain, the Task Force recommends that in the relatively unusual situation in which the father is the child's primary caregiver, the demands of that role be accommodated with the paid leave of twelve weeks that would typically be available only to mothers. The Task Force makes this recommendation in recognition of the demands made upon a father who, for example, is a sole adoptive parent or whose wife suffers a disability in connection with the birth or adoption of a child.

☐ THE TASK FORCE RECOMMENDS THAT ANY EMPLOYEE WHO IS THE PRIMARY CAREGIVER OF A CHILD BE PERMITTED TO EXTEND HIS OR HER PARENTAL LEAVE ON AN UNPAID BASIS FOR UP TO AN ADDITIONAL SIX MONTHS FOLLOWING ANY PAID PARENTAL LEAVE.

For much the same reasons that it believes that a twelve-week leave is a virtual necessity for mothers and for primary caregiver fathers at the time of the birth or adoption of a child, the Task Force believes that an extended period of leave is advisable. The Task Force found that many large firms already provide for substantial periods of unpaid leave—for as much as six months—but that many small and medium-sized firms and even small practice groups cannot afford or manage to have a lawyer or, in some situations, a secretary, away from work for a period of this duration. The Task Force recommends that firms provide as long an extended unpaid leave, up to six months in addition to the twelve-week paid leave, as is feasible given the firm's circumstances. In formulating this aspect of its parental leave policy, a firm should take care that, in the case of actual maternal disability, a female employee receive no less than the firm's generally applicable disability benefits. Additionally, where no disability exists but the firm has a generally applicable personal leave policy, the firm's parental leave benefits should be no more restrictive.

Many small and medium-sized law firms suggested to the Task Force that, whereas smaller law firms are more constrained in terms of the duration of leave, paid or
unpaid, which they can offer to employees, small law firms are more accustomed to providing flexible work schedules on an extended basis than are larger law firms. The Task Force recommends, as is set forth in greater length in the section of this Report that deals with part-time work, that all law firms provide employees with significant flexibility in order to deal with child care responsibilities. We suggest, however, that to the extent a firm is unable to provide parental leave of substantially in excess of three months, it make every effort to meet the needs of young children and parents with flexible work arrangements especially during the first year following the birth or adoption of a child.

THE TASK FORCE RECOMMENDS THAT ANY EMPLOYEE WHO IS THE PRIMARY CAREGIVER OF A CHILD AND WHO IS RETURNING TO WORK FROM A PERIOD OF PARENTAL LEAVE BE PERMITTED TO RESUME WORK FOR AN INITIAL MONTH ON A PART-TIME SCHEDULE AGREEABLE TO THE EMPLOYEE AND TO THE LAW FIRM.

Both to accommodate the likelihood of unexpected developments in the initial return-to-work stage for a parent with new child care responsibilities and to facilitate the physical and emotional transition back to work, the Task Force suggests that law firms make available to any employee who is the primary caregiver of a child and who is returning from a parental leave an interim "phase-in" schedule for approximately one month. This benefit would be available to both full-time and part-time employees, with compensation during the interim period calculated on a proportional basis. The Task Force is aware of at least one large law firm in which a transitional half-time schedule has been utilized successfully.

THE TASK FORCE RECOMMENDS THAT LAW FIRMS PROVIDE PARENTAL LEAVE BENEFITS WITH THE EXPECTATION THAT AN EMPLOYEE'S ENTITLEMENT TO OR ELIGIBILITY FOR CONSIDERATION FOR AVAILABLE RAISES, BONUSES, SENIORITY, ADMISSION TO PARTNERSHIP AND OTHER ADVANCEMENT NOT BE AFFECTED IF THE CUMULATIVE PARENTAL LEAVE DOES NOT EXCEED ONE YEAR. 

This recommendation is not intended to constrain the exercise of an employer's judgment in evaluating the merits of an employee's performance for merit raises, bonuses, seniority, admission to partnership and other advancement. As is discussed in the proposal relative to part-time work, law firms would retain discretion as to when an associate or other employee becomes eligible for partnership or other advancement. The firm's expectation, however, would be that a cumulative leave of up to one year during the course of the firm's usual six-to ten-year period preceding partnership consideration would not have an impact on eligibility for advancement. Information gathered by the Task Force indicates that the practices of many law firms, often on an ad hoc basis, lead to this result or to a similar result.

Given the relatively lengthy period for consideration for partnership that exists in larger firms and the amount of work and responsibility given lawyers through the partnership consideration period, in the usual case the professional development of a lawyer otherwise on track for partnership is not likely to be significantly affected by leave or leaves of up to one year in total duration over the course of the total time that precedes partnership consideration.

The Task Force recognizes that, in light of the firm's usual criteria for partnership, eligibility might be delayed where an associate takes more than a year of parental leave, especially if the total leave period is substantially more than the one-year period, or where the partnership consideration period is less than six years. However, the Task Force recommends that, as in the context of lawyers who work between 60 percent and 80 percent-time (see section on part-time work), firms should focus on an assessment of professional development and should not delay eligibility for partnership solely as a result of the length or number of an individual's parental leaves.

5. M.G.L. c. 149, §105D (see footnote 1 in this section) mandates less than the Task Force recommends. The statute provides, in part, that a female employee who takes an eight-week maternity leave and complies with the provisions of §105D

6. Additionally, the WBA study indicates that 15 legal employers in various sectors of the legal community have policies that specify that maternity leave will have no effect on eligibility for promotion or partnership.
THE TASK FORCE RECOMMENDS THAT LAW FIRMS EMPHASIZE TO EMPLOYEES THE NEED FOR EARLY COMMUNICATION AS TO THE TIMING AND DURATION OF A LEAVE.

The Task Force views as useful to an employer a requirement that an employee keep the employer advised, as early and with as much certainty as is available under the circumstances, of the employee's plans with respect to the timing and duration of a parental leave. An employee's absence may impose financial hardships on a law firm or practice group, in addition to difficulty in managing the employee's absence, in planning coverage during that period and in anticipating the timing of the employee's return. The Task Force recommends that a firm's parental leave policy stress to all employees the importance of clear, open and honest communication as to the new parent's plans for leave, the timing of leave and the employee's anticipated work schedule on return to work (see section on part-time work).

THE TASK FORCE RECOMMENDS THAT HEALTH, HOSPITALIZATION, DISABILITY, LIFE AND OTHER INSURANCE AND PENSION BENEFITS BE CONTINUED DURING ANY PERIOD OF PARENTAL LEAVE, WHETHER PAID OR UNPAID, BUT THAT THE ACCRUAL OF SICK LEAVE, PERSONAL TIME AND VACATION TIME DURING THE PERIOD OF ANY UNPAID PARENTAL LEAVE BE AT THE LAW FIRM'S DISCRETION.

The Task Force found universal concern among employees that health and related benefits not be discontinued during any period of parental leave. To the extent that firms consider a limitation on benefits, it is important that any such limitation not apply to health benefits, whether during a paid or unpaid parental leave. In this regard, it is necessary for firms to review their own insurance policies to determine if employees are required to exercise rights to purchase insurance at group rates during the leave period, even if the employer reimburses the employee for those payments. Firms should also clarify the availability under their own insurance policies, during any leave period, of certain benefits such as life insurance. The Task Force suggests that law firms that are unable to afford the cost of the full range of benefits during periods of unpaid leave consider the option of reducing or eliminating benefits that can be withheld with less hardship to the employee, such as the accrual of personal leave and vacation time, during unpaid leave periods.

THE TASK FORCE RECOMMENDS THAT AN EMPLOYEE WITH AN ALLOCATED AMOUNT OF SICK TIME BE PERMITTED TO USE THE TIME FOR THE CARE OF A TEMPORARILY ILL CHILD.

Something of an "orphan" issue that surfaced on several occasions during the deliberations of the Task Force is the problem of attempting to balance professional demands with family commitments when a child is temporarily ill. As a matter of practice, it seems plain—and appropriate—that employees, both lawyers and support staff, often stay home when faced with the sudden illness of a child. Although lawyers may sometimes have less flexibility to do so than do support staff, they also are perceived to have greater discretion to choose to stay home in the absence of immovable schedules. Support staff have less discretion, but often do have available an allocated number of sick days which should, in the view of the Task Force, be explicitly available for the temporary illness of a child as well as the illness of the employee.

The Task Force was advised that many insurance policies do not provide for benefits to employees during periods of leave or in the context of certain part-time arrangements. In these instances, firms should advise employees to exercise their rights under COBRA (the Consolidated Omnibus Budget Reconciliation Act, P.L. 99-272 (1986)) to avoid lapse of insurance coverage. Failure to do so may leave the employee and, in some cases, the firm, liable for uncovered benefits.
PART-TIME WORK

The Task Force endorses, virtually as a benefit "must," the availability of part-work to lawyers and support staff alike for child care purposes. Of all the family-supportive benefits that law firms can offer parents, part-time work is the most significant. From the parent's point of view, this is so for one simple reason: the "benefit" an employed parent needs most is time with his or her children. It is the most significant from the firm's point of view for a host of reasons. Law firm work is time-intensive, and part-time work represents a major departure from firm culture. Unlike parental leave, part-time work will often be a long-term proposition, involving as much as 15 or 20 years of an individual's work life. Because of its importance to working parents, the availability of part-time work increasingly will be the measure by which firms will be judged as hospitable or inhospitable to those employees.

The Task Force believes that the key to any successful part-time policy is flexibility, both on the part of the lawyer who works part-time and on the part of the firm. Different kinds of part-time arrangements will meet the particular needs of different individuals and of different kinds and sizes of firms or practice groups. By the same token, lawyers who work less than full-time must retain significant flexibility in their work schedules, in order to be available for emergencies and to clients and colleagues when possible.

The recommendations of the Task Force with respect to part-time work have as their central thesis—and this cannot be emphasized too strongly—that part-time work should be viewed as legitimate and as absolutely consistent with a serious commitment to the practice of law. To the fullest extent possible, lawyers who work part-time should be given work of the same quality as that given to similarly experienced lawyers who work full-time. No second-class citizenship status should result from the choice of a part-time schedule.

Other sections of the Task Force Report are directed to all law firm employees, lawyers, secretaries and other staff alike. We have approached this section differently, and have adopted different recommendations for different employment categories.

The recommendations and discussion of the Task Force with respect to part-time work follow.

☐ THE TASK FORCE RECOMMENDS THAT LAW FIRMS ENCOURAGE LAWYERS TO WORK FULL-TIME FOR APPROXIMATELY TWO YEARS, IN THEIR PRIMARY AREA OF PRACTICE, BEFORE ASSUMING A PART-TIME SCHEDULE.

Immersion in practice in the early years of training has long been the expectation and experience of law firms and has obvious benefits for firms and lawyers alike. A lawyer who works full-time for an initial period may be integrated more quickly into the firm’s work life and may progress more rapidly in terms of his or her professional development. Additionally, it may be easier for a firm to assess the professional development of a lawyer who works full-time.

However, increased experience with part-time work arrangements has demonstrated that full-time work is not indispensable to the development of lawyering skills. The Task Force therefore recommends that law firms encourage lawyers to work full-time for a meaningful period of time, but also urges firms to consider carefully the needs of individuals who feel that their child care responsibilities make a full-time schedule untenable.

The recommendation of the Task Force is that firms make available to lawyers all of the following options for part-time work, as well as any other arrangements that meet the needs of individual attorneys and firms. The Task Force recognizes that a particular option may "fit" a firm's culture better than others, but emphasizes that different arrangements may meet different individuals' needs, or even the changing needs of an individual over time.

☐ THE TASK FORCE RECOMMENDS THAT LAW FIRMS PERMIT ANY LAWYER WHO WISHES TO DO SO IN ORDER TO CARE FOR HIS OR HER CHILD OR CHILDREN TO WORK NO LESS THAN 80 PERCENT-TIME, WITH THE EXPECTATION THAT ELIGIBILITY OF ASSOCIATE LAWYERS FOR PARTNERSHIP WILL NOT BE DELAYED.

The Task Force concluded that it is useful to consider issues related to part-time work
with reference to the proportion of a full-time schedule that is involved. The Task Force views the policy considerations associated with a schedule that is at least 80 percent of full-time as different from the considerations appropriate in the context of a substantially more reduced workload. Thus, the 80 percent-schedule would be available to lawyers for child care purposes after whatever period, if any, the firm encourages new lawyers to work full-time in the firm or in a primary area of practice.

The view of the Task Force in this regard is that, although not insignificant, a reduction of up to 20 percent in an attorney's hours of work is a reasonable accommodation for a firm to make in light of an attorney's family obligations, as well as one that is becoming increasingly familiar to a number of Boston law firms.1 Although an attorney who works 80 percent-time may come close to working what would be viewed in some jobs as full-time, the reduction in time may well, for some attorneys, make the difference between a tenable and an untenable balance between work and family life.

A lawyer working at least 80 percent-time would be paid a proportional amount of the applicable full-time salary. What constitutes 80 percent-time would be determined with reference to what constitutes a full-time schedule, for example, 80 percent of the average of full-time hours for lawyers in the firm, or 80 percent of the firm's yearly target or required number of hours for lawyers,

1 The Task Force is unaware of data that focus on private firms in Boston, as opposed to a broader range of law practice settings in the entire state. Further, none of the reported data on part-time work is tabulated with reference to the proportion of part-time involved. As noted in the section of this Report addressed to parental leave, the 1990 Economics of Law Practice Survey indicates that 24 percent of law firms employ at least one part-time lawyer and 14.7 percent of sole practitioners do so; 5.7 percent of firms have part-time partners; 9.1 percent report part-time of counsel and 15 percent report the employment of other part-time lawyers.

As also noted in the section of this Report on parental leave, the 1989 report of the Women's Bar Association of Massachusetts tabulated general information as to the existence of an employer's part-time policy, rather than specific information as to the percentage of full-time work permitted. Responses to the WBAA's questionnaire indicated that 50 legal employers in various sectors of the legal community reported an explicit employment policy permitting part-time work for attorneys. Of those employers reporting an employment policy permitting part-time work, eight had policies specifying that part-time work has no effect on eligibility for promotion or partnership; six had policies specifying that part-time work delays eligibility; one had a policy specifying that part-time work precludes consideration for promotion or partnership. Forty-five legal employers reported experience with attorneys working part-time.

depending on the firm's generally applicable policy.

As is the case with respect to lawyers who work full-time, the firm would retain discretion as to when an associate who works 80 percent-time becomes eligible to be considered for partnership. The expectation, however, would be that the eligibility for partnership of lawyers who work no less than 80 percent-time would not be delayed. In the event that, as a result of the reduced workload, the individual's professional development or the need for further opportunity to assess his or her development requires a delay, the delay would be expected not to exceed one year beyond the generally applicable period of time for consideration for partnership.

THE TASK FORCE RECOMMENDS THAT LAW FIRMS PERMIT ANY LAWYER WHO WISHES TO DO SO IN ORDER TO CARE FOR HIS OR HER CHILD OR CHILDREN TO WORK BETWEEN 60 PERCENT AND 80 PERCENT OF FULL-TIME FOR ONE YEAR, WITH FURTHER ANNUAL EXTENSIONS AVAILABLE AT THE FIRM'S DISCRETION WHERE FEASIBLE IN TERMS OF THE NEEDS OF THE FIRM OR PRACTICE GROUP, AND WITH THE EXPECTATION THAT CONSIDERATION FOR PARTNERSHIP WILL OCCUR AT A TIME CONSISTENT WITH THE LAWYER'S PROFESSIONAL DEVELOPMENT.

As with the 80 percent-arrangement, compensation would be proportional to the percentage of time agreed upon. This work arrangement would be reviewed on a yearly basis to assess its impact on the needs of the firm or work group and on the lawyer's professional development and could be discontinued by the firm with sufficient notice to permit the lawyer to make appropriate child care or other arrangements if the firm considered the arrangement unsatisfactory.

Lawyers who work between 60 percent and 80 percent-time would be eligible to become partners, although eligibility might be delayed if appropriate in light of the firm's usual criteria for partnership, with particular attention to the individual's professional development and the possible need for further opportunity to assess such development. The law firm should focus, in making partnership decisions with respect to lawyers who work between 60 percent and 80 percent-time, on professional development. The firm should avoid reductions in the rate of advancement that are attributable to part-time status per se.
The 60 percent-arrangement is framed in this recommendation as available for one year, following whatever period of full-time work the firm encourages. In light of the yearly reassessment of such an arrangement for each lawyer who chooses it, the arrangement would become discretionary with the firm after a year, depending on whether it was working in a satisfactory fashion in terms of the impact on the attorney's professional development and on the needs of the firm or practice group.

Additionally, the Task Force recognizes that the impact on a firm's work allocation processes and cost structure of a 60 percent-arrangement is more significant than the impact of an 80 percent-arrangement. Nonetheless, the Task Force concludes that the failure to provide such work arrangements—or at least to provide a significant trial period to determine whether the arrangement can work in a particular setting and for a particular individual—will effectively exclude some lawyers from the practice of law. The Task Force judges this to be an unacceptable result, extraordinarily costly, in the long run, to firms and lawyers alike.

☐ THE TASK FORCE RECOMMENDS THAT, WHERE FEASIBLE IN TERMS OF THE NEEDS OF THE LAW FIRM OR PRACTICE GROUP, LAW FIRMS PERMIT ANY LAWYER WHO WISHES TO DO SO IN ORDER TO CARE FOR HIS OR HER CHILD OR CHILDREN TO WORK LESS THAN 60 PERCENT-TIME.

In this situation, lawyers would be paid either on an hourly basis or, as with the other part-time arrangements, on a percentage basis with proportional compensation. A less than 60 percent-time arrangement would presumably reduce the rate of progress in a lawyer's professional development and, thus, would likely slow the lawyer's advancement for partnership consideration purposes. However, the Task Force recommends that firms not consider such lawyers "off partnership track," and pay close attention to the actual circumstances of their work and responsibilities in this period. Rapid progression towards partnership in this context may, at least for the time being, be at odds with the larger firms' somewhat more formal procedures and criteria for partnership. Lawyers from smaller firms indicated that their firms' partnership tracks typically involve more ad hoc procedures and that, in that setting, progression for lawyers employed on this basis may not be problematic.

This work arrangement would be subject to regular, periodic review, at intervals deemed appropriate by the law firm, to assess its impact on the needs of the firm or work group. Once again, the arrangement should be discontinued only with sufficient notice to permit the lawyer to make appropriate child care or other arrangements.

Although this recommendation of the Task Force is framed as discretionary with the law firm, the Task Force urges firms to consider the utility and benefits of such an arrangement, in certain circumstances, for all concerned. Particular projects may lend themselves to an arrangement of this nature, on either a long-term or a short-term basis, and particular child care demands may make work on a more intensive basis undesirable for some period of time.

The Task Force also suggests that attorneys and firms, in the context of work arrangements that involve less than 80 percent-time, consider certain reasonable economies in connection with the arrangement, such as sharing of office space and pooling of secretaries, where appropriate. No such adaptations, however, should be viewed as a relegation of lawyers who work part-time to the status of second-class citizen.

☐ THE TASK FORCE RECOMMENDS THAT, AT THE END OF EACH YEAR, LAW FIRMS REVIEW THE ACTUAL NUMBER OF HOURS OF A LAWYER WHO WORKS PART-TIME, AND INCREASE COMPENSATION WHERE THE LAWYER HAS WORKED SUBSTANTIALLY MORE HOURS THAN WOULD BE EXPECTED IN LIGHT OF HIS OR HER PART-TIME ARRANGEMENT.

Many lawyers who work part-time reported to the Task Force that, on occasion, the demands of a particular case or transaction caused them to increase their time commitment substantially for some extended period of time. Sometimes it becomes clear only in retrospect that this has happened. Sometimes a lawyer may choose to become involved in an obviously demanding project because in his or her view the professional benefits or the needs of the firm or practice group justify doing so. When a lawyer who has a part-time schedule works full-time for a matter of days or a few weeks, his or her overall time commitment will probably even out over the year. When the departure from an agreed-upon part-time schedule is prolonged—many weeks or even months—the only fair and feasible solution may be an equitable adjustment in compensation. Lawyers from at least two large firms reported to
the Task Force that their firms had, in these circumstances, made such adjustments.

☐ THE TASK FORCE RECOMMENDS THAT LAW FIRMS CONSIDER OFFERING CERTAIN OF THEIR REGULARLY PROVIDED EMPLOYEE BENEFITS ON A PRO-RATED BASIS TO LAWYERS, SECRETARIES AND OTHER STAFF WHO WORK LESS THAN FULL-TIME.

The Task Force recommends that a law firm consider carefully which benefits it can fairly offer on a pro-rated basis to any employee who works part-time. In doing so, firms should, of course, review the provisions of their own benefits plans, should consider the impact of non-discrimination rules imposed by the Internal Revenue Code, and must comply with such applicable requirements of the Universal Health Law as are in effect.

☐ THE TASK FORCE RECOMMENDS THAT, WHERE FEASIBLE, LAW FIRMS PERMIT SECRETARIES AND OTHER STAFF TO WORK ON A FLEXIBLE SCHEDULE.

The experience of many law firms is that opportunities for what has come to be known as flex-time can readily be made available to secretaries and other staff. Under this arrangement, an employee works on a full-time basis, but has flexibility, consistent with the needs of the particular lawyer or lawyers with whom he or she works, to begin and end work at hours which are more convenient in terms of the employee's child care responsibilities.

\[\text{The 1990 Economics of Law Practice Survey (see footnote 3 in the Parental Leave section) indicated that 37.4 percent of all respondents (not limited to law firms) employ part-time support staff and that 36.4 percent of sole practitioners do so.}\]
CHILD CARE SERVICES

Many parents feel that in certain circumstances, particularly in early infancy or when a child is ill, no day care can meet their or their child's needs. Certain recommendations of the Task Force with respect to parental leave and, to some extent, part-time work, support this sentiment.

For much of their children's early and even school-age years, however, working parents need high quality, affordable day care. The recommendations of the Task Force address this issue in this section of the Report and in the section on tuition assistance, and attempt, in so doing, to put the issue of the direct provision of day care services into realistic and appropriate context, given the cost of space in downtown Boston.

THE TASK FORCE RECOMMENDS THAT LAW FIRMS OFFER CHILD CARE RESOURCE AND REFERRAL SERVICES TO ALL EMPLOYEES.

Most parents, particularly first-time parents, need assistance in finding child care and in learning how to evaluate the quality of that care. Child care resource and referral services provide parents with referrals throughout the state, to center-based care, family day care, school-age care and in-home care. Parents are counseled by the service on what to expect from each type of care, on minimum standards for health and safety, and on the developmental needs of their child's age group. Resource and referral services are also often able to increase the pool of available day care by recruitment of family day care providers and through the expansion of center-based programs in areas where the demand exists.

One option for law firms is to utilize the Boston Bar Association's child care resource and referral service, which is available to all BBA members. Although this valuable benefit is not available to non-lawyers, a firm may wish to use the BBA's service in conjunction with a service that can consult with the firm's non-lawyer staff.

The cost to a firm of providing resource and referral services to its employees is a direct function of the size of the firm. Thus, these services are usually well within the financial means of even small-sized firms. Because employees are responsible for the full cost of care identified, whether by means of resource and referral services or otherwise, these services, of course, do not substitute for the tuition assistance programs discussed in a separate section of this Report.

THE TASK FORCE RECOMMENDS THAT LAW FIRMS PROVIDE THEIR EMPLOYEES WITH EMERGENCY BACK-UP CHILD CARE AFTER AN ASSESSMENT OF THE MOST APPROPRIATE METHOD(S) FOR DOING SO.

Emergency back-up care refers to care which is available when an employee's regular child care arrangements fail for any one of a number of reasons. Emergency back-up care can take several forms, including contract ed in-home care, reservation of day care center slots, and on-site care. The need for back-up child care arises, for example, when a day care provider is ill or on vacation, a day care center is closed because of a snowstorm, or a child is mildly ill. 

The need for back-up care, unlike the need for part-time work, will arise on an occasional basis. The Task Force emphasizes, therefore, that even the most readily available of back-up care arrangements will not be a substitute for part-time work options. Additionally, the recommendation that back-up care be provided is meant to supplement rather than to supplant the recommendation of the Task Force that allocated sick time be explicitly available for care of a temporarily ill child (see section on parental leave).

The Task Force urges law firm employers to evaluate the available forms of emergency

1 At the focus groups of lawyers and support staff which discussed early versions of these recommendations, there was some reaction that the concept of emergency back-up care is philosophically in conflict with the premise underpinning the Task Force—that law firms as employers must become more responsive to the parenting needs and obligations of employees and their children. In other words, some focus group members felt that an employee with an unexpected breakdown in regular day care arrangements should stay home rather than feel obligated to work simply because of the availability of a back-up day care arrangement, particularly when the day care is unavailable because of a child's illness. Other focus group reactions, as well as empirical evidence, however, make clear that there is in fact much demand for back-up day care. Presumably, employees who feel strongly about staying home in emergency circumstances will do so, the availability of back-up day care notwithstanding.
back-up care in terms of the nature and amount of the need for such care at the particular firm before providing this benefit. The following types of emergency back-up care arrangements are available and being used increasingly by the Boston legal community, and experience should provide useful information in the near future as to the economics and utilization of this benefit.

Contracted in-home care is based on a firm’s agreement with an agency that sends screened providers to the employee’s home when regular child care is unavailable for any reason, including the illness of a child. The firm typically pays the annual registration fee and the hourly agency fee for the number of total annual hours purchased. The benefit can be structured such that either the firm or the employee pays the provider’s hourly wage or such that the provider’s hourly wage is divided between the two. The benefit would typically provide that an employee may use a given number of days annually—ten days is suggested. As with child care resource and referral services, the cost to a firm of contracted in-home care is determined by firm size, thus making the benefit relatively affordable even for small and medium-sized firms.

The reservation of slots in a near-by daycare center is another way of providing emergency back-up care. Here again, the benefit would typically provide that the employee may use the day care center for a certain number of days annually, and may or may not require the employee to pay a portion of the cost of any days used. One of the important differences between in-house and center-based care is that the latter will not be available when the regular day care arrangement has fallen through because of the illness of a child. Reservation of day care slots is also a relatively affordable benefit, since its cost, like in-home care, is related to firm size.

Emergency back-up care can also be provided by means of a center-based program at the worksite. This benefit requires a firm to set aside day care space in its building, outfit it for children, and obtain a license from the Office for Children. Licenses are currently being provided for programs of this kind on a pilot or demonstration basis. The center can be managed by the firm itself or by an independent agency with which the firm contracts. The benefit would afford child care to employees for a set number of days per year, with or without some charge to the employee. Again, the center would not be available for sick children. Unlike the other forms of emergency back-up care discussed, on-site care is probably not affordable for smaller firms, although a consortium arrangement with other small firms might well make on-site care more affordable. As a practical matter, the cost of downtown space will often make on-site care an expensive benefit even for larger firms.

THE TASK FORCE RECOMMENDS THAT LAW FIRMS CONSIDER, WHERE FEASIBLE, THE OPTION OF PROVIDING REGULAR CHILD CARE IN AN ON-SITE CENTER.

Because of the high cost of downtown space, on-site child care, on either a regular or an emergency basis, will typically be unaffordable, even for larger firms. Occasionally, however, often when a firm is planning a move into new space, a firm can provide such a facility. In those circumstances, especially in light of new regulations promulgated by the Office for Children which no longer require first-floor space for day care, firms should consider providing on-site child care.
Recognizing that on-site child care is neither feasible nor affordable for most firms, the Task Force explored other ways for firms to help employees meet their regular child care needs. A number of employers, mainly in fields other than law, have begun to offer child care tuition assistance to their employees. These employers have found that assisting employees with their child care costs encourages valued employees to continue working after they have children, and is a good recruitment tool for new employees.

Tuition assistance is a particularly valuable benefit in Boston, where the cost of care averages $150 per week—or $7,800 per year—for one child. Statewide, the cost of child care averages between $5,700 and $11,800 per year for one child. Child care tuition assistance is, therefore, a valuable benefit, particularly for single parents and for employees who are at the lower end of a firm’s compensation scale.

The Task Force recommends that law firms include child care tuition assistance in their benefits packages, and offers the following suggestions as to how these benefits might be structured.

☐ THE TASK FORCE RECOMMENDS
THAT LAW FIRMS MAKE AVAILABLE TO ALL EMPLOYEES A DEPENDENT CARE TUITION ASSISTANCE PLAN ("DECAP") UNDER SECTION 129 OF THE INTERNAL REVENUE CODE.

DECAP is an inexpensive benefit to offer to employees, and one that is relatively simple to administer. Federal tax law allows any employee whose employer has instituted DECAP to set aside, as pre-tax dollars, up to $5,000 of his or her salary to meet child care expenses and any other dependent care expenses that qualify under the federal tax code. Employees using DECAP have average tax savings of about $1,400 per year, making it a valuable benefit, particularly for higher paid employees.

The Task Force learned, in discussions with law firm employees, that utilization has not been high in firms that have instituted DECAP. This may well be, at least in part, because employees need to consider a number of factors before using DECAP, including how its benefits compare with that of the federal tax credit for dependent care expenses. As a result, personnel managers and employees alike appear to need more information before large numbers of employees will take advantage of this benefit. In addition, some firms, the Task Force was told, had considered putting DECAP in place, but found it confusing and decided against instituting it.

To address both of these concerns, the Boston Bar Association is planning to investigate the addition to its membership benefits of access, at a discounted rate, to a DECAP consultant. This consultant could help a firm develop the Plan, prepare information to explain the benefits of DECAP to employees, and train personnel staff on how to administer it. Since employers who have instituted DECAP report that, once developed, it is not a complicated benefit to administer, such assistance would be a valuable benefit.

☐ THE TASK FORCE RECOMMENDS
THAT, IN ADDITION TO OFFERING DECAP, LAW FIRMS OFFER CHILD CARE TUITION ASSISTANCE TO ALL EMPLOYEES WHO HAVE BEEN EMPLOYED FOR AT LEAST ONE YEAR AND WHOSE ANNUAL FAMILY INCOME DOES NOT EXCEED $60,000.

With the high cost of child care, there are many employees who struggle to pay for care, even with DECAP, particularly if they have more than one child or are among the less highly compensated of a firm’s employees. For this reason, the Task Force recommends that law firms provide employees with tuition assistance for child care in the form of above-salary dollars.

For most firms, funds for employee benefits are limited. Given the high cost of child care and its critical importance, the Task Force feels it important that funds be focused on those employees for whom they will provide the greatest benefit. The Task Force suggests in this regard, and only as a guideline, that firms cap eligibility for the benefit at an annual family income of $60,000. If, however, $25,000 realize little or no tax savings with DECAP.
a law firm views tuition assistance as a valuable recruitment tool for higher paid staff or as a particularly attractive benefit for any other reason, it should consider adjusting eligibility accordingly. The Task Force suggests, additionally, that firms offer this benefit only to employees who have worked at the firm for at least one year, the same time period recommended for eligibility for certain parental leave benefits.

A number of employees who participated in the focus groups raised a question as to whether the provision of tuition assistance benefits would engender resentment on the part of employees who have no child care expenses. To address concerns of this nature, some employers have included tuition assistance as a part of a "cafeteria benefit plan," whereby employees can choose child care tuition assistance instead of another benefit, such as tuition reimbursement for higher education, vacation days or health insurance if they have access to a spouse's plan. It is also important to recognize that utilization by employees of many, more familiar benefits varies in a number of different ways. When instituting or explaining a child-care tuition assistance program to employees, it may be helpful to point out, for example, that some firms reimburse employees for their tuition for certain courses or allow them time off to take courses, although not all employees use these benefits. Similarly, firms may pay higher premiums for employees with a family health insurance plan than for those with an individual plan. Some employees use more sick and vacation time than others, or decline to take advantage of a firm's health club membership benefits.

While there are many methods for calculating tuition assistance benefits, the Task Force recommends that firms link the amount of the assistance to the employee's actual cost of care, but set a cap on the benefit amount. Tying the benefit to the actual cost of care responds to differences in cost, which will vary with the age of the child, the number of hours the child receives care and the type and location of the care. Imposing a ceiling, however, allows the law firm to cap its potential cost related to this benefit, and avoids the result of providing employees who choose the most expensive form of care the greatest benefit.

The Task Force recommends, again as a general guideline, that law firms reimburse employees for 50 percent of the cost of their child care, with a maximum weekly benefit amount of $50.00 for one child and $75.00 for two or more children. With the cost of child care in the greater Boston area averaging $150.00 per week for one child, firms will rarely pay the full 50 percent, but the benefit will make a significant difference to their employees.

Using the proposed cap and income ceiling as well as experience in other industries, the Task Force estimated the cost of tuition assistance in order to enable law firms to compare benefits costs. A firm should project utilization by assessing the needs of its own workforce, and should use the figures provided below only as rough estimates.

A firm with ten lawyers, six with family incomes less than $60,000 per year, and eight support staff, might have two employees, each with two children, using the maximum benefit proposed. This would cost the firm $8,000 per year.

A firm with 50 lawyers, all with family incomes over $60,000 per year, and 80 support staff, might have 10 percent of the support staff using the maximum benefit proposed. The annual cost to the firm would be $32,000.

A firm with 150 lawyers, all with family incomes over $60,000 per year, and 250 support staff, might have 10 percent of the support staff using the maximum benefit. This would cost the firm $100,000 per year.

In fact, the 10 percent utilization rate, as well as the assumption that all employees using the benefit will have two children and receive the maximum benefit, probably overestimates the cost of the benefit.

There are obviously a number of options to be considered in structuring a tuition assistance program. For that reason, the Boston Bar Association is planning to investigate, along with the provision of access to a DECAP consultant at a reduced rate, similar access to a tuition assistance consultant for Boston Bar Association members.