



Redefining Retirement Years: Workplace Flexibility Practices & State Law

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Connecticut, like many states, is faced with an aging workforce and must decide how best to retain its experienced and knowledgeable workforce members. The Redefining Retirement Years Committee (RRY) has identified that many older workers would like more flexible work options as they work past traditional retirement age, such as part-time work, job-sharing, compressed work week, flexible schedules, and telecommuting. This paper is the second in a series that is examining laws that impact the RRY initiative.

It is important to consider workplace flexibility initiatives in the context of the changing workforce. The current workforce includes four generations of workers, a different workforce than twenty-five years ago,¹ and nearly twenty percent of the workforce will be over fifty-five by 2012.² In 2002, researchers classified the four generations as: the Matures, 58 or older; Boomers, 38-57; Gen-X, 23-37; and Gen-Y, 18-22.³ The study findings were that Boomers were more likely to be work-centric than the other generations, Gen-X and Gen-Y members were more likely to be family-centric or dual-centric, and matures were more likely to be dual-centric.⁴

“Dual-centric” is a relatively new concept, and is used to describe individuals who are equally committed to work and family life.⁵ Evidence indicates that dual-centric employees are as

¹ See FAMILIES AND WORK INST., ISSUE BRIEF: GENERATION & GENDER IN THE WORKPLACE (2005), *available at* <http://familiesandwork.org/site/research/reports/genandgender.pdf>.

² Towers Perrin, *The Business Case for Workers Age 50+: Planning for Tomorrow's Talent Needs in Today's Competitive Environment 4* (2005), *available at* http://assets.aarp.org/rgcenter/econ/workers_fifty_plus.pdf.

³ *Id.* at 2.

⁴ *Id.* at 8.

⁵ ELLEN GALLINSKY, *DUAL-CENTRIC: A NEW CONCEPT OF WORK-LIFE* (2003) (discussing 2003 study findings from *Leaders in a Global Economy: A Study of Executive Women and Men*), *available at* <http://familiesandwork.org/site/research/reports/dual-centric.pdf>.

productive as work-centric employees, work five hours less per week, and are less likely to report feeling stressed.⁶

This paper examines the private sector's experience with workplace flexibility, common myths about workplace flexibility, and other states' laws and programs for workplace flexibility. It then examines existing Connecticut laws to identify potential barriers to expanding flexible employment options in Connecticut and laws that facilitate flexibility, with a focus on state employment.

I. WORKPLACE FLEXIBILITY

Workplace flexibility has been identified as an important factor for older workers considering staying in the workforce. But, it is arguably an equally important factor for employers looking to adapt to the changing workforce. This section is divided into three parts: (A) how the private sector is using workplace flexibility as a business strategy; (B) common myths about workplace flexibility; and (C) other states' laws that promote workplace flexibility.

A. Flexible Work Options: The Private Sector

Workplace flexibility is not new to the private sector. Private sector employers have been successfully using formal and informal workplace flexibility policies to the employer and employee's mutual benefit, while recognizing that not all jobs are suited for flexibility.

Several organizations have conducted substantial research on workplace flexibility: the Families and Work Institute; the Sloan Center on Aging & Work; AARP; and Corporate Voices for

⁶ *Id.*

Working Families. These organizations have focused on workplace flexibility as a culture change and as a business imperative to recruit and retain talented workers.

Workplace flexibility has been shown to increase employee productivity and job satisfaction, and reduce employee stress, absenteeism and turnover.⁷ But, despite these findings, the concern about costs and decreased productivity continue to be the most common obstacles to employers implementation of work-life initiatives, including flexibility.⁸

According to a recent study, private-sector employers are offering employees the same level of informal and formal flexibility options as they were ten years ago, despite the economic downturn.⁹ The study found two statistically significant changes in flexibility options: (1) 79% of employers allow at least some employees to change their daily start and end time, up 11% from 1998; and (2) 47% of employers allow at least some employees to change from full-time to part-time status while staying at the same job level, down 10% from 1998.¹⁰

In a 2005 study, twenty-nine private sector companies' internal workplace flexibility data were compiled to make the business case for workplace flexibility; its findings demonstrated that

⁷ ELLEN GALLINSKY, ET AL., 2008 NATIONAL STUDY OF EMPLOYERS 3 (2008), *available at* <http://familiesandwork.org/site/research/reports/2008nse.pdf>. Employee turnover is costly to the employer, and costs have been estimated between 41% and 50% of the employee's annual salary. FAMILIES AND WORK INSTITUTE, *supra* note 1, at 22; METLIFE MATURE MKT. INST., THE METLIFE CAREGIVING COST STUDY: PRODUCTIVITY LOSSES TO U.S. BUSINESS 6 (2006). One example of how turnover is costly to the employer, employee, and society is the caregiver. The average profile of a U.S. caregiver is a forty-six year-old female who works and provides about twenty hours of unpaid care per week. AARP PUB. POLICY INST., INSIGHT ON THE ISSUES: MAKING WORK MORE FLEXIBLE: OPPORTUNITIES AND EVIDENCE 3 (2008). Absent a culture of workplace flexibility, the caregiver is more likely to take unpaid leave or quit to fulfill her caregiving responsibilities. This is costly to the employer as turnover costs, the caregiver losses income and reduces her retirement income, increasing the likelihood that she will need state assistance in her old age.

⁸ GALLINSKY ET AL., *supra* note 7, at 33. Seven percent of participants indicated that there were no obstacles to implementing work life initiatives. *Id.* See also MELISSA A. HARDY, MAKING WORK MORE FLEXIBLE: OPPORTUNITIES AND EVIDENCE, (2008), *available at* http://assets.aarp.org/rgcenter/econ/i11_work.pdf.

⁹ GALLINSKY ET AL., *supra* note 7, at 6.

¹⁰ *Id.*

workplace flexibility improved productivity, employee retention, business performance, and shareholder value.¹¹ Based on these internal data, three business cases were made for workplace flexibility: (1) its contribution to talent management; (2) its impact on “positive human capital outcomes;” and (3) its positive impact on financial performance, business and operational outcomes.¹²

Stress reduction was one positive human capital outcome finding. It is estimated that stress costs businesses \$300 billion annually in healthcare, turnover, and lost productivity costs.¹³

Chrysalis Performance found that stress was responsible for, “19% of absenteeism, 40% of turnover, 55% of [Employee Assistance Program] costs, 30% of short-term and long-term disability costs, 10% of coverage for psychotherapeutic drugs,” in addition to several other expenses.¹⁴

Several participating companies had data that correlated workplace flexibility with increased customer satisfaction and increased revenue. First Tennessee Bank implemented workplace flexibility policies in some branches, and compared those branches to its other branches. The branches that implemented workplace flexibility policies experienced a 50% higher employee

¹¹ CORP. VOICES FOR WORKING FAMILIES, BUSINESS IMPACTS OF FLEXIBILITY: AN IMPERATIVE FOR EXPANSION 4 (2005), *available at* http://www.cvworkingfamilies.org/flex_report/flex_report.shtml. Corporate Voices for Working Families is a non-partisan, non-profit with fifty partner companies, and has developed a Flexibility Task Force with the following companies: Accenture, Allstate Insurance Company, Baxter International, Deloitte & Touche LLP, Discovery Communications, Eli Lilly Company, Ernst & Young, GlaxoSmithKline, JPMorganChase, KPMG, Marriott International, Inc., Merck & Co., The Phoenix Companies, Inc., and Sodexo. *Id.*

¹² *Id.* at 9. The report’s appendix provides advice for how businesses can use their own internal data to make the business case for flexibility. *Id.* at 28.

¹³ *Id.* at 14 (citing figure from Stress Institute of America).

¹⁴ *Id.* at 14-15.

retention rate, 7% higher customer retention rate, and a \$106 million increase in profits over two years compared to the other branches.¹⁵

Ernst & Young, an accounting firm, found a correlation between employees' perceived flexibility and increased revenue per person. Its employees that perceived they had higher levels of flexibility also reported that they were more committed to the business, and business units in the top quartile of commitment reported 20% higher revenue per person than the lowest commitment quartile.¹⁶

Several of the "champion" flexibility employers in the private sector have Connecticut ties: The Phoenix Companies, headquartered in Hartford; Deloitte & Touche, LLP, three offices; Ernst & Young, LLP, two offices; Pitney Bowes, headquartered in Stamford; Wells Fargo, 187 employees; L.L. Bean, one retail store; and CVS, retail stores state-wide. The Phoenix Companies, Deloitte & Touche, LLP, and Ernst & Young, LLP are all members of Corporate Voices for Working Families' Flexibility Task Force. Ernst & Young, and Deloitte were 2007 recipients of the Alfred P. Sloan Awards for Business Excellence in Workplace Flexibility.¹⁷ According to Deloitte, "Providing a flexible work environment is not an accommodation . . . but a sound business practice that reflects the realities of today's changing business world and the changing values of employees, especially younger employees."¹⁸

¹⁵ *Id.* at 20.

¹⁶ *Id.*

¹⁷ See FAMILIES AND WORK INST., WHEN WORK WORKS: 2008 GUIDE TO BOLD NEW IDEAS FOR MAKING WORK WORK (2008), available at <http://familiesandwork.org/3w/boldideas.pdf>.

¹⁸ *Id.* at 32.

CVS, Pitney Bowes, and L.L. Bean were all past recipients of AARP's Best Employers for Workers over 50 Award, and L.L. Bean and Wells Fargo are 2008 recipients.¹⁹ CVS also received the 2007 Business and Aging Award from the American Society on Aging.²⁰ CVS started actively recruiting older workers in the early 1990s, and its "Snowbird" program allows workers to work at a different location during the winter months. About 300 employees have taken advantage of the program, which helps CVS retain its workers, and provide the needed increased staffing during peak winter months in warmer climates.²¹

Forty-two percent of L.L. Bean's workforce is over age fifty and it offers employees a full-range of flexible work options, and offers retirees temporary work assignments, contract or consulting work, on-call, or full- or part-time work options.²² Notably, CTTransit, made AARP's list, and offers flextime or a compressed workweek as alternative schedule options.²³ Most employers on AARP's 2008 Best Employers for Workers over 50 offer flexible work options. Central Florida Health Alliance offers flexible work options to retain experienced health care workers, including summers off, six-months on and six-months off.²⁴

Additional flexible work options case studies are available through the Sloan Work and Family Research Network at Boston College.²⁵

¹⁹ See AARP Best Employers for Workers over 50, http://www.aarp.org/money/work/best_employers/.

²⁰ American Society on Aging 2007 Awards Programs, http://www.asaging.org/asav2/awards/business_2007.cfm?submenu1=business.

²¹ See *id.*

²² AARP Best Employers for Workers over 50, http://www.aarp.org/money/work/best_employers/articles/ll_bean_2008.html.

²³ *Id.* at http://www.aarp.org/money/work/best_employers/articles/cttransit_2008.html.

²⁴ *Id.* at http://www.aarp.org/money/work/best_employers/articles/central_florida_health_alliance.html.

²⁵ Workplace Flexibility Case Studies, <http://wfnetwork.bc.edu/template.php?name=casestudy>

B. Common Myths about Workplace Flexibility

The most common myths about flexible schedules are that they will increase costs and “encourage managerially undesirable behaviors.”²⁶ Research studies on flexible work schedules indicates that the benefits are likely to outweigh the costs, and some studies have found flexible schedules to be cost neutral or reduce costs. Research studies have also shown that flexible schedules reduce absenteeism, use of sick time, employee turnover, and even increase employee productivity and job satisfaction.

The following are common telecommuting myths, and responses from Arizona’s Telework Zone, a state employee telecommuting program that has been in place since 1993.²⁷ Myth: managers will not know if the employee is working; but, experience says: telecommuting changes supervising from *observing* activity to *measuring* work product. Myth: teleworkers must have a computer at home; but, experience says: not all tasks that can be done from home require a computer, and Arizona found that 67% of state employees have or would be willing to use their own equipment at home. Myth: teleworkers do not get promoted; but, Arizona found that: 89% of state telecommuters disagreed with “feeling out of the loop.” Myth: the public will not support state employees telecommuting; but, Arizona found that 70% of those surveyed responded favorably to a telecommuting program.

²⁶ The Sloan Work & Family Research Institute has compiled common myths and research about flexible work schedules. Myths and Misconceptions about Flexible Work Schedules, <http://wfnetwork.bc.edu/topic.php?id=2>.

²⁷ See Common Myths about Telework, <http://www.teleworkarizona.com/mainfiles/coordinator/cmyths.htm>.

More myths about telecommuting can be found on the Telecommute Connecticut! website.²⁸ Pilot studies conducted by other states also refute many of the workplace flexibility myths.²⁹

C. Flexible Work Options: Other States' Initiatives.

State laws can promote or hinder flexible work options such as part-time employment, job-sharing, compressed work week, flexible schedules, and telecommuting. This section takes a non-exhaustive look at other states' laws and programs to promote workplace flexibility to glean what methods have been successful and could serve as viable options for Connecticut.

Many states have enacted specific legislation that allows for part-time teachers, police officers, or firefighters,³⁰ and related legislation concerning participation in retirement plans. But, because these statutes serve narrow purposes and provide little insight for formulating best practices they are excluded from this paper. Flexibility laws that stem from workers' compensation, unemployment, and the Older Americans' Act, are also beyond the scope of this paper. While these laws may promote flexible work options, their limited scope reduces their utility as broad policy options. Table 1 lists the workplace flexibility laws and policies by state that were examined as part of this paper. Although states may not have laws that explicitly promote workplace flexibility, that should not be interpreted to mean that they do not foster workplace flexibility.

²⁸ Telecommute Connecticut!, http://www.telecommutect.com/press/ten_myths.php.

²⁹ See DIANE M. SHOOK, AHCCCS VIRTUAL OFFICE EVALUATION PROJECT: FINAL REPORT (2007), *available at* <http://www.teleworkarizona.com/mainfiles/supervisor/svopilot.htm>. See also North Carolina Office of State Personnel, State of North Carolina Teleworking Pilot Program (2000), *available at* <http://teleworking.osp.state.nc.us/report/final.html>.

³⁰ E.g., ALASKA STAT. § 16-24-60 to 16-24-68 (part-time teachers). Hawaii limits the number of part-time school cafeteria workers, in accordance with the collective bargaining agreement, and requires part-time cafeteria workers to work at least 20 hours per week. HAW. REV. STAT. § 302A-637.

The current research findings in the private sector, outlined in the previous section, reinforce the policy reasons behind most states' workplace flexibility initiatives. The most common policy reasons behind workplace flexibility laws are: (1) to promote broader recruitment and higher caliber applicants; (2) to increase employee productivity or improved services; and (3) to reduce environmental pollution and traffic congestion.³¹

The most common laws applicable to the private sector are mandatory environmental programs, emissions credits or permits, and tax incentives.³² As illustrated in Table 1, many states have taken the initiative to implement some type of workplace flexibility program; but, some states stand out with more innovative approaches.

Arizona's governor initiated its telecommuting program in 1993 and it continues to serve as a model program.³³ The state employee telecommuting program currently has 4,328 participants,

³¹ Broader recruitment: Maine, Massachusetts, North Carolina, Rhode Island, and Wisconsin all promote broader recruitment and/or higher caliber applicants. ME. REV. STAT. ANN. tit. 5, §§ 901-903; MASS. GEN. LAWS ch. 7, § 6F; N.C. Gen. Stat. §§ 126-74 through 126-79; R.I. Gen. Laws §§ 36-3.1-1 through 36-3.1-8; Wis. Stat. § 230.215. Increased productivity: Maine, North Carolina, Oklahoma, Oregon, Rhode Island, and South Carolina include increased productivity or improved services to the public. 5 M.R.S. §§ 901-903; N.C. GEN. STAT. §§ 126-74 through 126-79; OKLA. STAT. tit. 74, § 840-2.26; OR. REV. STAT. § 240.855; R.I. GEN. LAWS §§ 36-3.1-1 through 36-3.1-8; S.C. CODE ANN. § 8-11-15. Environmental concerns: Arizona, California, Oregon, Texas, Virginia, and Washington all have laws intended to reduce environmental pollution and/or traffic congestion with the use of workplace flexibility. Cost savings: Oregon and South Carolina include agency cost savings as a reason for implementing workplace flexibility statutes. OR. REV. STAT. § 240.855; S.C. CODE ANN. § 8-11-15.

³² Major employers are required to implement alternative work schedules as part of state clean air acts. ARIZ. REV. STAT. ANN. § 49-454 (requiring adjusted work hour plans for employers with 500+ employees); WASH. REV. CODE § 70.94.531 (requiring major employers in effected areas must implement commute reduction plans which may include flexible or alternative schedules). An employer's use of alternative work schedules can earn them emissions credits or may be required for emissions permits. 625 Ill. Comp. Stat. 33/15 (allowing emissions credits for business owners within Chicago ozone non-attainment area who utilize telecommuting or compressed workweeks); Tex. Health & Safety Code § 328.05193 (requiring a telecommuting program as part of an emissions reduction project for a facility to qualify for an emissions permit).

³³ Arizona Exec. Order No. 93-16, *available at* <http://azmemory.lib.az.us>. Telework Zone's Program History, <http://www.teleworkarizona.com/mainfiles/visitor/voverview.htm>.

exceeding its goal of 20% of state employees.³⁴ The Arizona Health Care Cost Containment System (AHCCCS) launched a Virtual Office project in 2005 to address the following issues: the aging workforce; compensation rates well below market value; and high employee turnover and absenteeism rates.³⁵ AHCCCS has reduced its office space need by one building and has 15% of its workforce working through the Virtual Office.³⁶

Telecommuting and alternative work schedules are the major components of Arizona's program. A state agency is allowed, at the director's discretion, to utilize alternative work schedules so long as existing services can be maintained.³⁷ State employees are reimbursed for up to 100% of telecommuting, public transportation, van pool, and private bus service expenses.³⁸ Major employers are required to decrease employee travel time in an effort to reduce air pollution.³⁹

Virginia's Office of Telework Promotion and Broadband Assistance was originally established by executive order in 2006 to assist public and private sector employers with increasing telecommuting efforts.⁴⁰ Telework!VA, established by the Department of Rail and Public Transportation, is a program designed to reduce commuter traffic congestion.⁴¹ The Telework!VA program offers private for-profit and non-profit companies up to \$35,000 in start-up costs for

³⁴ Arizona Exec. Order No. 2003-11 *available at* <http://teleworkarizona.com/pdf/execorder03.pdf>; Telework Zone's Background, <http://www.teleworkarizona.com/mainfiles/supervisor/soverview.htm> (more than 20% are telecommuting).

³⁵ AHCCCS Virtual Office Pilot, <http://www.teleworkarizona.com/mainfiles/supervisor/svopilot.htm>.

³⁶ *Id.*; OFFICE OF EFFICIENCY REVIEW, VIRTUAL OFFICE IMPLEMENTATION TOOL KIT: A SOLUTION FOR STATE GOVERNMENT 7 (2007), *available at* <http://www.teleworkarizona.com/vo/toolkit.htm>

³⁷ ARIZ. REV. STAT. ANN. § 41-783.

³⁸ ARIZ. REV. STAT. ANN. § 41-786.

³⁹ ARIZ. REV. STAT. ANN. § 49-588. A business with 500 or more employees must submit adjusted work hour plans. ARIZ. REV. STAT. ANN. § 49-454.

⁴⁰ Commonwealth of Virginia Exec. Order No. 35 (2006), *available at* http://www.otpba.vi.virginia.gov/pdf/EO_35.pdf. The office was codified in 2008. VA. CODE ANN. § 2.2-225.1.

⁴¹ Telework!VA, <http://www.drpt.virginia.gov/projects/teleworkva.aspx>.

implementing a telework program.⁴² The program also offers information for employees and employers, including e-tutorials on how to set-up a telework program.⁴³

Oregon and Washington also have well-established programs that are largely driven by environmental concerns.⁴⁴ Oregon's state employee safety and health division regulations explicitly state that telecommuting worksites are not businesses.⁴⁵

Several states offer incentives to private employers such as tax credits or emission credits. Washington provides a tax incentive to employers who provide financial incentives to employees to rideshare, including telework.⁴⁶ In order for a facility to qualify for an emissions permit, Texas requires the facility to include an employee telecommuting program as a component of an emissions reduction project.⁴⁷ Illinois offers emissions credits for business owners within Chicago's ozone non-attainment area who utilize telecommuting or compressed workweeks.⁴⁸ New Jersey's Smart Moves Program entitled employers to a tax credit, up to 10% of the costs of a commuter transportation benefit for "alternative means of commuting," but the program expired in 2007.⁴⁹

⁴² Telework!VA Get Started, <http://www.teleworkva.org/getStarted/index.aspx>.

⁴³ For Teleworkers, <http://www.teleworkva.org/forTeleworkers/index.aspx>; For Managers, <http://www.teleworkva.org/forManagers/index.aspx>; E-learning Tools, <http://www.teleworkva.org/elearningTools/index.aspx>.

⁴⁴ See Table 1.

⁴⁵ OR. ADMIN. R. 437-001-0015.

⁴⁶ WASH. REV. CODE § 82.70.020.

⁴⁷ TEX. HEALTH & SAFETY CODE ANN. § 382.05193.

⁴⁸ 625 ILL. COMP. STAT. 33/15.

⁴⁹ N.J. STAT. ANN. § 27:26A-15.

Minnesota restricts a state agency's ability to propose or implement a capital improvement plan unless the agency has submitted a plan to increase telecommuting by employees in the building, or prepared a statement why a telecommuting plan is impractical.⁵⁰

Several New England states' workplace flexibility statutes allow for broad application. Rhode Island's legislation allows the appointing authority to negotiate alternative work plans with unions, provided that the plans, "allow the maintaining of adequate work coverage and service to the public."⁵¹ Similarly, Maine's legislation allows the governor to negotiate alternative working hours with unions, and the director of Human Resources creates rules for non-union employees.⁵² Massachusetts's flexible work statute refers only to part-time and flextime opportunities.⁵³ But, the state's Alternative Work Options Program includes many more flexible work options, including job-share, compressed workweek, and telecommuting.⁵⁴

⁵⁰ MINN. STAT. § 16E.05.

⁵¹ R.I. GEN. LAWS § 36-3.1-4.

⁵² ME. REV. STAT. tit. 5, § 903.

⁵³ MASS. GEN. LAWS ch. 7, § 6F.

⁵⁴ Alternative Work Options Program policies, guidelines, and information sheets are available at <http://www.mass.gov> under "Human Resources Division Policies and Benefits."

II. CURRENT CONNECTICUT LAW & WORKPLACE FLEXIBILITY

This section examines current Connecticut law and identifies potential barriers to workplace flexibility as well as current laws that facilitate flexibility.⁵⁵

A. Potential Barriers to Flexibility

State laws that are potential barriers to flexibility come from two sources: the State Personnel Act and related regulations; and the Collective Bargaining for State Employees statutes. Furthermore several sections of the State Employee Retirement Act warrant clarification.

The state employee work hours statute and regulations are a potential barrier to flexibility because they set a uniform set of hours per day and week. The work hours statute requires all employees in the same class to work a uniform number of hours per day and week, and the Commissioner of the Department of Administrative Services (DAS) must document any exceptions and the exception's reasons.⁵⁶

The DAS Commissioner has the authority to establish regulations for setting “uniform and equitable” work schedules in the executive department, and may designate positions or classes as “unscheduled” when job requirements cannot be met with a regular schedule.⁵⁷ But, unscheduled employees cannot average more than thirty-five hours or five workdays per week in an eight week period.⁵⁸ The corresponding regulations stipulate that the regular schedule for all employees is seven

⁵⁵ State wage and hour laws and age discrimination laws are not addressed, as they were covered in a previous paper.

⁵⁶ CONN. GEN. STAT. § 5-238. Summer state park employees hired for June through October are excepted from the hours statutes and regulations, receiving only a base hourly rate for all hours worked. CONN. GEN. STAT. § 5-238a.

⁵⁷ CONN. GEN. STAT. § 5-238.

⁵⁸ *Id.*

hours per day and thirty-five hours per week, “except as otherwise provided by properly approved work schedules.”⁵⁹

A labor organization has the right to negotiate wages, hours and other employment conditions for represented employees.⁶⁰ This is a potential barrier to workplace flexibility insofar as it prohibits the state, as an employer, from unilaterally setting flexible work schedules for unionized employees. But, as stated in the next section, many of the current Collective Bargaining Agreements (CBAs) include provisions for utilizing workplace flexibility.⁶¹

The State Employee Retirement Act and State Personnel Act include several references to a mandatory retirement age of seventy.⁶² While a mandatory retirement age is in effect for state judges, firefighters, and law enforcement officers, it appears that the mandatory retirement age for all other state employees was eliminated in the 1980s as part of the collective bargaining process.⁶³ DAS Management Personnel Policy 87-5 eliminates the mandatory retirement age for non-unionized employees and lists sections of the general statutes that, “shall be repealed and/or modified to this end and in conformance with the ADEA.”⁶⁴ The state and unions have the authority to negotiate CBA terms that conflict with state law,⁶⁵ and the DAS Commissioner has the authority to extend the rights and benefits bargained for to non-union and unclassified employees.⁶⁶ But,

⁵⁹ CONN. AGENCIES REGS. §§ 5-238-1 through 5-238-5.

⁶⁰ CONN. GEN. STAT. § 5-271.

⁶¹ *Infra* p. 18.

⁶² *See* CONN. GEN. STAT. §§ 5-162(c)(2), 5-162(d)(2), 5-164, 5-1921(b), 5-1921(e), and 5-243.

⁶³ *See* DEP’T OF ADMIN. SERV., MANAGEMENT PERSONNEL POLICY NUMBER 87-5 (June 6, 1988) (eliminating mandatory retirement age for non-union, unclassified, and state-aided institution employees by extending the Supplemental Pension Agreement terms approved by House Resolution No. 8).

⁶⁴ *Id.* § 5-243 that pertains to reemployment post-retirement also references “the mandatory retirement age.”

⁶⁵ CONN. GEN. STAT. § 5-278.

⁶⁶ CONN. GEN. STAT. § 5-200(p).

clarification on these statutes is warranted because there is no legislative history to indicate that these statutes have been abrogated.⁶⁷

Another statute, although not a potential barrier to workplace flexibility, may warrant revision to eliminate its outmoded reference to “infirmities caused by *advanced age or other disability*.”⁶⁸

B. Current Laws Promoting Workplace Flexibility

There are several Connecticut statutes and regulations that promote workplace flexibility in the public or private sector, either directly or indirectly. These laws are: transportation statutes and programs; the State Employee Retirement Act; affirmative action regulations; collective bargaining for state employees statutes; and the State Personnel Act.

The Department of Transportation (DOT) and the Transportation Strategy Board encourage workplace flexibility in both the private and public sector as a way to assist air pollution and traffic congestion reduction efforts.

The Connecticut Department of Transportation’s Telecommute Connecticut! program was established as a commuter program in 1996 to assist employers with alternatives to single-car commuting.⁶⁹ The commuter program statute requires the DOT to assist all employers with 100 or

⁶⁷ See CONN. GEN. STAT. §§ 5-162, 5-164, and 5-192l.

⁶⁸ See CONN. GEN. STAT. § 5-244 (emphasis added). According to the DAS website the “less arduous duties” statute applies to a state employee with a Workers’ Compensation injury that permanently prevents the employee’s return to regular duty. Less Arduous Duty Process, http://www.das.state.ct.us/WorkersComp/WCopp_template.asp?F_ID=44. But, it seems unlikely that the legislature intended to allow an employee to recover under workers’ compensation for infirmities caused by advanced age.

⁶⁹ CONN. GEN. STAT. § 13b-38a mandates that the Department of Transportation develop commuter programs; Telecommute Connecticut! was established in 1996. Telecommute Connecticut! Program Backgrounder, http://www.telecommutect.com/press/prgrm_backgrounder.php.

more employees in one location with establishing commuter programs.⁷⁰ The same statute authorizes the DOT, funding permitting, to make grants to municipalities, transit districts, or ride-sharing organizations for design and implementation of a transportation management plan. Flexible work schedules are one suggested program element for the transportation management plans.

Telecommute Connecticut! is designed to help an employer assess its business needs, draft policies and procedures, and pilot a custom telecommuting program.⁷¹ The Telecommute Connecticut! website provides information for employees and employers, including why flexible workplace options often attract and retain the best talent and a list of common telecommuting myths.⁷²

Employers utilizing Telecommute Connecticut! include Sikorsky, CIGNA, Aetna, Hospital of Saint Raphael, The Pension Service, Smith Brothers Insurance, Cannondale Financial, and Gregory & Howe.⁷³ Telecommute Connecticut! helped Sikorsky achieve manager and employee buy-in to the company's already-established telecommuting program, and developed a program for Gregory & Howe that improved employee productivity and eliminated the need for more office space.⁷⁴ CIGNA reduced its turnover rate for nurse care managers by 30% after implementing its telecommuting program, and reduced its space needs by one building. CIGNA credits the reductions in turnover, commuting time, and absenteeism with its improved productivity.⁷⁵

⁷⁰ CONN. GEN. STAT. § 13b-38a.

⁷¹ Telecommute Connecticut! Program Backgrounder, http://www.telecommutect.com/press/prgrm_backgrounder.php.

⁷² Top 10 Myths & Facts about Telecommuting, http://www.telecommutect.com/press/ten_myths.php.

⁷³ Case Studies, http://www.telecommutect.com/press/case_studies.php

⁷⁴ *Id.*

⁷⁵ *Id.*

The Transportation Strategy Board was created in large part in response to Connecticut's congested roadways,⁷⁶ and the statute mandating the board's transportation strategy plan encourages flexible work hours and telecommuting as plan components.⁷⁷ According to the board's 2007 report, the state is currently, "a non-attainment area for the federal, health-based standards for ozone."⁷⁸ The same report includes flex-time and telecommuting as two possible ways to facilitate "moving people" in Connecticut, one of the board's broad strategies.⁷⁹ The board urges the state, as an employer, to lead by example and increase employee incentives for utilizing public transportation.⁸⁰

A part-time permanent employee is eligible to participate in the state retirement system.⁸¹ The state's Affirmative Action Plan regulations are another source for supporting alternative work schedules. The regulations suggest job-sharing and flex-time as possible measures in a plan to eliminate disparity against a protected class, including older persons.⁸² "Accordingly, within the framework of the affirmative action plan is an open invitation to each agency to structure innovative, comprehensive programs to create opportunities not otherwise available to achieve the full and fair participation of all protected group members."⁸³

⁷⁶ TRANSP. STRATEGY BD., MOVING FORWARD: CONNECTICUT'S TRANSPORTATION STRATEGY, REPORT AND RECOMMENDATIONS OF THE TRANSPORTATION STRATEGY BOARD (Jan. 1, 2007).

⁷⁷ CONN. GEN. STAT. § 13b-57g.

⁷⁸ *Id.* at 27.

⁷⁹ TRANSP. STRATEGY BD., *supra* note 76, at 18.

⁸⁰ *Id.* at 46.

⁸¹ CONN. GEN. STAT. § 5-162g

⁸² CONN. AGENCIES REGS. § 46a-68-44.

⁸³ CONN. AGENCIES REGS. § 46a-68-49.

Under the collective bargaining statute for state employees, the state and a labor organization are allowed to negotiate collective bargaining agreement (CBA) terms that conflict with state statutes or regulations, provided that the legislature approves the agreement by majority vote.⁸⁴ Subsequent contract negotiations may include the same terms without legislative review, if the language has not changed.⁸⁵

There are thirteen CBAs available on the Office of Labor Relations website, and all contracts contain either flexible work schedule options or modify the standard work hours.⁸⁶ Four CBAs modify the standard workweek—NP-4, NP-5, NP-8, and P-5.⁸⁷ Nine CBAs provide for some form of alternative work schedule—flextime, compressed workweek, job-sharing, or four-day workweek—or agree to explore alternative work schedules with individual agencies.⁸⁸ Five of the CBAs also include a provision that allows exempt employees to work a flexible work schedule if they regularly attend evening meetings or are called upon to perform work outside the regular schedule.⁸⁹

⁸⁴ CONN. GEN. STAT. § 5-278.

⁸⁵ *Id.*

⁸⁶ Current Collective Bargaining Agreements are available at http://www.ct.gov/opm/cwp/view.asp?a=2992&Q=383228&opmNav_GID=1792&opmNav

⁸⁷ CORRECTIONS [NP-4] BARGAINING UNIT CONTRACT BETWEEN STATE OF CONNECTICUT AND COUNCIL 4 OF THE AFSCME (July 2004-June 2008) (standard is 36.25 hours); PROTECTIVE SERVICES [NP-5] BARGAINING UNIT CONTRACT BETWEEN STATE OF CONNECTICUT AND PROTECTIVE SERVICES EMPLOYEE COALITION (July 2004-June 2008) (standard is 40 hours, 7 a.m. to 5:30 p.m.); STATE OF CONNECTICUT AND CONNECTICUT STATE EMPLOYEES ASSOCIATION, SEIU LOCAL 2001 CORRECTION SUPERVISORS UNIT (July 2005-June 2008) (standard is 40 hours). Administrative and Residual [P-5] Bargaining Unit Contract between State of Connecticut and Administrative and Residual Employees Union (July 2003-June 2007) (40 hours 8 a.m. to 5 p.m. Monday through Friday).

⁸⁸ *See, e.g.* MAINTENANCE & SERVICE UNIT (NP-2) CONTRACT BETWEEN STATE OF CONNECTICUT AND CONNECTICUT EMPLOYEES UNION INDEPENDENT (July 2005-June 2008).

⁸⁹ Bargaining Units NP-2, NP-3, NP-6, P-1, and P-4 all include such a provision. “Exempt employees who are required by the State to attend regular and recurrent evening meetings or otherwise to be called out regularly and recurrently to perform work outside the regular scheduled workweek shall be authorized to work a flexible work schedule or to receive compensatory time off . . .” MAINTENANCE & SERVICE UNIT (NP-2) CONTRACT BETWEEN STATE OF CONNECTICUT AND CONNECTICUT EMPLOYEES UNION INDEPENDENT Article 18 § 16(d) (July 2005-June 2008).

The voluntary schedule reduction program allows a permanent state employee to take a scheduled, unpaid leave of several days or partial days without losing seniority or benefits.⁹⁰ Under the program's regulations, requests for a voluntary schedule reduction will not be approved if the employee is in the "Initial Working Test" period or the reduction would result in the employee being ineligible for health insurance benefits.⁹¹ It is unclear how an employee's request could result in the employee being ineligible for health insurance benefits because the regulations also state that an employee's health and life insurance benefits will remain the same during a schedule reduction period.⁹²

The telecommuting and work-at-home program authorizes state employees to telecommute.⁹³ But, the program's utility is limited because it only allows for telecommuting on a temporary basis and the arrangement must be cost effective.⁹⁴

The state employee telecommuting guidelines, developed by DAS, outline what types of jobs are suitable to telecommuting, the pros and cons of telecommuting, and emphasize that employment terms and conditions remain unchanged. In 2004 DAS conducted an internet survey, and found that about 55% of the surveyed employers had some form of a telecommuting program.⁹⁵ Only 6% of those employers found the program increased employee productivity, and a similar percentage found it reduced costs.⁹⁶

⁹⁰ CONN. GEN. STAT. § 5-248c

⁹¹ CONN. AGENCIES REGS. § 5-248c-2.

⁹² See CONN. AGENCIES REGS. § 5-248c-3(a).

⁹³ CONN. GEN. STAT. § 5-248i.

⁹⁴ *Id.*

⁹⁵ DEP'T OF ADMIN. SERV., THE STATE OF CONNECTICUT TELECOMMUTING PROGRAM 2 (2005).

⁹⁶ *Id.* These results are very different from other studies on the subject.

The telecommuting guidelines emphasize that telecommuting changes the work location, not work hours and, “an employee’s *full range of duties* must be specified and able to be performed from home or the alternate work-site. This would preclude managers and supervisors from telecommuting.”⁹⁷ The guidelines also state that dependent care for children and elders must take place *outside* the home while the employee is telecommuting.⁹⁸

According to a 2006 survey, 9% of Connecticut’s workforce telecommutes at least one day per month.⁹⁹ In fiscal year 2006 there were 181 state employee telecommuting agreements in nine agencies, and in fiscal year 2007 there were 140 agreements in six agencies.¹⁰⁰ Assuming that only full-time state employees had telecommuting agreements and each contract represents a separate telecommuter, only 0.23% of full-time state employees were telecommuting in fiscal year 2006 and 0.17% in fiscal year 2007.¹⁰¹ But, because the agreements only last six months, the number of telecommuters likely is lower than the number of executed agreements.¹⁰² Most telecommuters are in the Department of Revenue Services.¹⁰³

⁹⁷ *Id.* at 5, 8 (emphasis added).

⁹⁸ *Id.* at 11.

⁹⁹ GOVERNOR M. JODI RELL, FY 2009 MIDTERM ECONOMIC REPORT OF THE GOVERNOR 46-47 (2008).

¹⁰⁰ Office of Legislative Research, Bill Analysis for sSB 673 An Act Concerning Improved Telecommuting Programs for the State’s Workforce as amended by Senate “A” (CT 2008).

¹⁰¹ Calculations are based on the Department of Administrative Services’ annual reporting required by CONN. GEN. STAT. § 5-204. The reports are available in The Digest of Administrative Reports to the Governor, http://www.das.state.ct.us/Press_Room.asp.

¹⁰² Office of Legislative Research, Bill Analysis for sSB 673 An Act Concerning Improved Telecommuting Programs for the State’s Workforce as amended by Senate “A” (CT 2008) (“The majority of telecommuting agreements are extended since they cannot exceed six months. Thus, the number of employees participating in the program is fewer than the number of telecommuting agreements.”)

¹⁰³ *Id.*

III. ADOPTING A CULTURE OF WORKPLACE FLEXIBILITY IN CONNECTICUT

“Hours, visibility (face-time), process or location, are not measures of success; business outcomes, employee productivity and engagement are what count.”¹⁰⁴

There are several ways that Connecticut can initiate a culture of flexibility: (1) revise current laws to broaden workplace flexibility options and remove barriers; (2) lead by example as an employer; or (3) look to the Governor to spearhead workplace flexibility in state employment.

Revising state law could broaden workplace flexibility in Connecticut. The state employee work schedule statutes and telecommuting statute could be combined into one work schedule statute that fosters flexibility. This does not mean that state employees should be allowed to choose their own schedules, agencies lose their management control, or agencies implement flexible work options at the expense of maintaining services. Rather, the existing schedule statutes that make flexibility the exception could be replaced with one that allows an agency to implement innovative flexible workplace options while requiring the agency to maintain its service level. This would allow the agency head to decide whether job-sharing, telecommuting, flex-time, compressed workweek, or some other variation would help the agency function better. It would also leave the budgeting decisions to the agency, and the director could decide whether the benefits of implementing a particular flexibility option outweigh its costs.

Another option is to reintroduce Senate Bill 673, a 2008 proposed amendment to the current telecommuting program, either in its current form, or broaden it to include additional

¹⁰⁴ CORPORATE VOICES FOR WORKING FAMILIES, CORPORATE VOICES FLEXIBILITY PRINCIPLES (2006), *available at* <http://www.cvworkingfamilies.org/issues/publications.shtml>.

workplace flexibility options. The senate passed S.B. 673, but it was never voted on in the house.¹⁰⁵

The bill requires the commissioner to establish guidelines and includes employee productivity, reduction in traffic congestion, and environmental benefits as reasons to approve a telecommuting arrangement.¹⁰⁶ S.B. 673 also eliminates the requirement that the commissioner approve the telecommuting arrangement, leaving the decision to the agency head.¹⁰⁷

S.B. 673 passed with only six nay votes, but it is worth mentioning that the Office of Fiscal Analysis's report estimates that costs could exceed \$2000 per employee.¹⁰⁸ This calculation assumes that the state must purchase equipment, software, and internet access to create an at-home workstation. If the employee's equipment could be used, the state would only incur the expense for updating the security software.¹⁰⁹ This raises the question whether the state is able to purchase enterprise-wide software licenses. If it is, then additional software costs should not be incurred for every telecommuter.

Even if these costs must be incurred, they would likely be offset by increased employee productivity. In contrast, the costs incurred when non-essential state employees are released early during a snowstorm are much higher, with no productivity. Assuming 20,000 employees are released four hours early and each employee makes ten dollars per hour with no fringe benefits, one

¹⁰⁵ The last action on 2008 S.B. 673 was that it was assigned House Calendar Number 555 on May 6, 2008. The bill's history is available at <http://www.cga.ct.gov>. 2008 H.B. 5566 was introduced to provide employers with a 10% tax break for telecommuting employees, similar to 2007 S.B. 677.

¹⁰⁶ 2008 S.B. 673.

¹⁰⁷ 2008 S.B. 673.

¹⁰⁸ Office of Fiscal Analysis, OFA Fiscal Note on sSB 673 An Act Concerning Improved Telecommuting Programs for the State's Workforce, *available at* <http://www.cga.ct.gov/2008/FN/2008SB-00673-R000453-FN.htm>.

¹⁰⁹ *Id.*

storm release costs \$800,000—enough funding to fully equip four hundred employees with home workstations at the estimated \$2000 per employee.¹¹⁰

Another option is for the state, as an employer, to promote existing flexible workplace options, and lead by example as the Transportation Strategy Board suggested. The DOT has promoted telecommuting to the private sector for twelve years, and has funded Telecommute Connecticut!, but the utilization rate for the state employee telecommuting program is almost zero. The state was recently criticized for its low utilization rate in Connecticut Magazine, “you have the absurd scenario of state and federal funds (via the Clean Air Act) being used by the state’s Department of Transportation to help private businesses save money while the state itself ignores it.”¹¹¹

The governor could spearhead a workplace flexibility initiative in state employment, similar to the gubernatorial support Arizona and Virginia received. The governor could also promote workplace flexibility for state workers as part of the recently launched “One Thing” campaign. Alternative work schedules and telecommuting are not going to solve Connecticut’s air pollution or traffic congestion problems, but they can be part of a demand management solution. Improved public transportation systems, road improvements, and cleaner alternative-fuel vehicles will go further to solving these problems, but such solutions will take time and money. In the meantime

¹¹⁰ On December 19, 2008, state employees were released early due to weather. See STATE OF CONNECTICUT EXECUTIVE CHAMBERS, GOVERNOR RELL ORDERS STAGGERED RELEASE OF STATE EMPLOYEES; ACTIVATES EMERGENCY OPERATIONS CENTER (Dec. 19, 2008).

¹¹¹ Alan Bisbort, *Tell A Commuter: Do as we say, not as we do—is that the motto in Hartford when it comes to telecommuting?*, CONN. MAG., Oct. 2008, at 13.

alternative work schedules can be “One Thing” that employers, including the state, can do to reduce energy costs and air pollution.

CONCLUSION

Connecticut has made some steps towards encouraging workplace flexibility in both the public and private sector, and the state laws that are potential barriers to workplace flexibility are not insurmountable. Connecticut has an opportunity to build on its existing laws to promote workplace flexibility as a recruiting and retention tool, and to prepare to be competitive in the global market place. At the same time, employers, including the state, could realize cost savings by decreasing employee absenteeism, presenteeism, and turnover, reducing health care costs, and increasing employee productivity and customer service.

Workplace flexibility should not be seen as an option that only older workers want, or an “employee perk.” It should be seen as an essential tool for Connecticut employers to recruit and retain talented workers of all ages. Gen-X and Gen-Y members, like older workers, want more workplace flexibility. Promoting workplace flexibility could alleviate the “brain drain” and retain experienced workers, and both are needed even more so during this tough economic time.