

# Managing flexible work arrangements in US organizations: formalized discretion or ‘a right to ask’

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Scholars of the American workplace agree that the employment relationship has changed in significant ways but disagree about whether workplaces are now best characterized as ‘legalized’ or ‘restructured’, a designation that implies a market orientation in the treatment of workers. We investigate whether a new set of employment practices, namely flexible work arrangements (FWA) such as flextime, compressed work weeks, telecommuting and reduced-hours schedules, are administered using the principles and practices associated with either or both management regimes. Our analyses of in-depth interviews with human resources managers from 41 diverse organizations show that most organizations have formalized FWA with written policies, but these policies institutionalize managerial discretion rather than creating outright rights for employees. Even when organizations write a formal written policy, FWA are managed as negotiated perks available to valued workers if and when managers choose to allow them, as suggested by the restructured workplace regime. We argue that this ‘formalized discretion’ explains the low utilization and unequal access to FWA found in previous studies. These findings suggest the need to reconsider the theoretical link between formalization and employees’ rights in the workplace.

**Keywords:** Flexible work arrangements, formalization, legalization, restructuring, human resources, working hours, part-time employment

**JEL classification:** M52 Compensation and Compensation Methods, M54 Labor Management, K31 Labor Law

## 1. Introduction

There is widespread agreement that the employment relationship has changed in important ways in the US over the last 40 years. However, there is no consensus

among scholars about where we have ended up. Some scholars of the American workplace claim the employment relationship is now 'legalized,' while others see a significant 'restructuring' of American workplaces in the last 20 years. Legalization refers to the infusion of legal ideals and the spread of formalized, quasi-legal employment policies in American workplaces (Edelman, 1992; Dobbin and Sutton, 1998; Piore and Safford, 2005). The restructuring of the workplace refers, among other things, to the individualized negotiation of pay and benefits, the decentralization of authority and the decay of both collective and individual employment rights (Kalleberg *et al.*, 1996; Cappelli *et al.*, 1997; Osterman, 2000; Handle and Levine, 2004). Some contend that the restructured workplace has replaced the legalized workplace (or rendered current employment laws irrelevant) while others argue that legalization continues to influence management decisions and cultural expectations about the employment relationship.

Researchers have attempted to pin down how broad, how deep and how consequential these changes have been (Cappelli *et al.*, 1997; Edelman and Petterson, 1999; Osterman, 2000; Kalleberg, 2001). Some have documented the prevalence of specific practices and policies that are associated with either legalization or restructuring (e.g. Edelman, 1990; Dobbin *et al.*, 1993; Appelbaum and Batt, 1994; Osterman, 1994, 2000; Sutton *et al.*, 1994). Other scholars have studied the day-to-day experiences of workers in supposedly legalized or restructured workplaces to see if organizations are 'walking the walk' or just 'talking the talk' (e.g. Smith, 2001; Vallas, 2003*a*, 2003*b*; Albiston, 2005). We take a different approach to evaluating the influence of these two management regimes in contemporary US organizations. We examine a set of new practices—flexible work arrangements (FWA)—to see how they are conceptualized, justified and administered by managers in a diverse sample of 41 US organizations.

FWA include flextime (where workers can set their own starting and stopping times), compressed-work-weeks (where workers work, for example, four long days and have one weekday off), telecommuting (where workers complete their work tasks at home or in another remote site) and voluntary part-time work, particularly job-sharing (splitting a job with another person). These work arrangements are attractive to many employees, particularly those with family caregiving responsibilities (Bond *et al.*, 1997; Blair-Loy and Wharton, 2002). In a nationally representative sample surveyed in 2002, 79% of US workers report that they would 'like to have more flexible work options' and 61% would prefer to reduce their work hours (Galinsky *et al.*, 2004, p. 21; see also Clarkberg and Moen, 2001). Compared to the standardized hours and the separation of home and work that has been the norm since the Industrial Revolution, FWA give workers some control over how they arrange their work lives. The terms

FWA and flexibility have been used in various ways in literature (e.g. Kalleberg, 2001; Zeytinoglu, 2002), but we focus on the administration of changes to the amount, location or scheduling of work that are requested by employees.

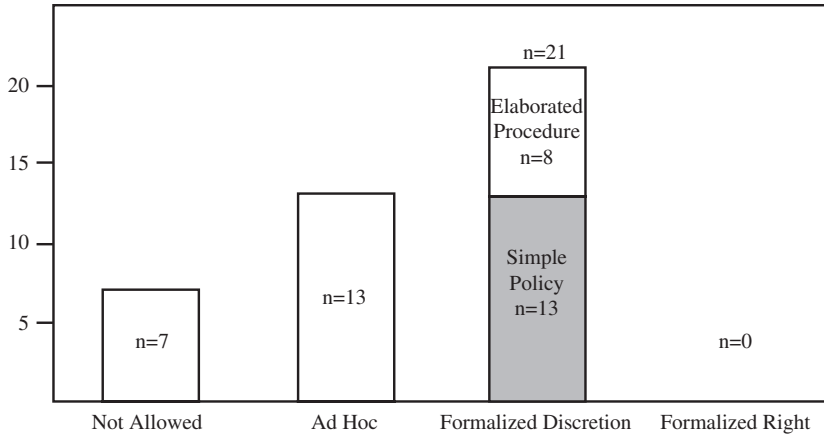
By management regime, we refer to the policies and practices for managing the workforce and also to the ideas, beliefs and assumptions that make these policies and practices seem sensible (Bendix, 1974; Barley and Kunda, 1992; Bourgeois and Sutton, 2004; Guillen, 1994; Shenhav 1999).<sup>1</sup> We do not classify organizations as either 'legalized' or 'restructured' because this would reify these regimes and imply a greater consistency within management practices than we expect.<sup>2</sup> Instead we understand these two management regimes as cultural models or 'toolkits' (including both practices and ideas) that organizational actors may draw on to make sense of their actions and the larger cultural environment (Weick, 1985; Swidler, 1986; Barley and Kunda, 1992; Stryker, 1994, 2000). As managers make sense of new employment practices and implement them in their organizations, do they look to one or both of these management regimes for guidance? We argue that the management of these new practices—which could be understood as fitting into either management regime—provides an indication of the current state and future direction of the employment relationship in the US.

As we describe below, the legalized and restructured regimes developed in a historical sequence, with legalization preceding restructuring. Empirical research on American management regimes reports regular changes in the period since industrialization (e.g. Bendix, 1956; Edwards, 1979; Kochan *et al.*, 1986; Barley and Kunda, 1992). Some research suggests that these changes follow a pendulum swing, with advocates of new regimes deriding the old models as no longer suitable for the current economic environment (Barley and Kunda 1992; Abrahamson and Fairchild 1999). Yet institutional theory claims that regimes become taken-for-granted and unreflectively applied to new situations, regardless of their relevance (Selznick, 1957, 1969; Meyer and Rowan, 1977; Powell and DiMaggio, 1991). These two literatures point to different predictions about the administration of new practices such as FWA. The former implies that managers will look to the newer management regime to guide them as they implement new practices *and* that managers will implicitly or explicitly reject the old management regime as they enact the new one. The latter predicts that the

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<sup>1</sup> The term 'employment relations regime' is more accurate, because the management regimes we examine concentrate on the employment relationship rather than supply chain decisions, marketing strategies or other areas of management; however, we refer to management regimes for simplicity.

<sup>2</sup> New empirical research shows that organizations often have policies and practices associated with several different employment regimes simultaneously (Bourgeois and Sutton 2004).



**Figure 1** The management of flexible work arrangements in 41 US organizations.

institutionalized assumptions and practices from the older regime will continue to influence managers and organizations.

To preface our main findings: we find strong evidence of the influence of the restructured workplace regime on these practices, as well as a continuing—but less explicit—concern with legal ideals among many human resources (HR) managers. Specifically, we find that most organizations manage FWA with *formalized discretion*, i.e. written policies are developed but these policies explicitly protect managers’ discretion to grant or deny requests for FWA (Figure 1). These policies create a case-by-case system for decisions rather than laying out uniform qualifications for gaining FWA. These policies reflect key tenets of the restructured workplace management regime, such as the use of contingent rewards to keep commitment and productivity high, the devolution of authority to line managers and resistance to the ‘entitlements’ associated with the legalization of the workplace. At the same time, we find hints of the legalized workplace regime in the fact that policies are formalized in writing, in references to the legal ideals of fairness and consistency and in managers’ continuing attention to legally defensible decision-making.

Previous research on FWA has investigated which organizations ‘offer’ or ‘allow’ FWA, but most investigators have not examined *whether* there are actually written FWA policies in place, *what* the FWA policies say or *how* they work in practice (Knoke, 1993; Goodstein, 1994; Knoke, 1994; Ingram and Simmons, 1995; Osterman, 1995; Witowski, 1999; Lee *et al.*, 2000; Deitch and Huffman, 2001; Dex and Schiebl, 2001; Lewis, 2003; cf. Eaton, 2003). We are essentially investigating the content of the dependent variable in these previous studies, after our initial research suggested to us that ‘offering FWA’ meant quite different things in different organizations. This work also complements studies of

single organizations that have tried to explain the limited use of FWA even when these practices are covered by ‘officially-available work–family policies’ (Hochschild, 1997; Blair-Loy and Wharton, 2004; cf. Fried, 1998 on parental leaves). These studies have explained the limited use of FWA by arguing that workers’ identities and priorities were actually oriented more to work than to family, by examining how work-group dynamics affect who asks for and gets FWA, and by reporting that employees realize there is a disjuncture between the broader organizational culture and the promises of FWA policies. While these insights are valuable, researchers have not examined how the FWA policies, themselves, may foster limited utilization.

Before delving into the details of our findings and discussing their implications, we describe the two management regimes in more detail, develop hypotheses about how managers adhering to each regime would structure and administer FWA, and orient the reader to our data and methods.

## 2. Two management regimes

The legalized workplace regime and the restructured workplace regime both take large bureaucratic organizations of the mid-twentieth century as their starting point and then describe important changes in the way that organizations relate to their employees. Both regimes claim that the employment relationship has moved beyond the bureaucratic ideal type of a stable hierarchy with clear roles for management and workers. However, these two regimes present dramatically different pictures of the central changes in the employment relationship and where we are heading next (Table 1). In this section, we describe the basic features of each regime, identify the employment practices associated with it and develop hypotheses about the administration of FWA under each regime.

### 2.1 *Legalization of the workplace*

The legalization of the American workplace extends and elaborates the bureaucratic regime that developed and diffused in the first half of the twentieth century (Edwards 1979; Baron *et al.*, 1986; Stryker, 2003). The formalization of the employment relationship and the uniform treatment of employees are the key—and closely related—elements of this employment relationship. Both limit the power of individual managers by cutting them out of many decisions. Legalization supposedly protects workers from managerial capriciousness and discrimination. As Selznick puts it, ‘Formal rules promise equal treatment; they define expectations; they tend to specify the limits of authority’ (1969, p. 90).

Legalization also changes workers’ expectations about the workplace because bureaucracy is now infused with legality (Selznick, 1969). In other words, the institutional logic of the (democratic) state has made its way into, and

**Table 1** Two management regimes

	<b>Legalized workplace regime</b>	<b>Restructured workplace regime</b>
Institutional model for work organizations	Polity	Market
Understanding of employee	Citizen–worker	Free agent in the market
Decision-making	Formalized and regulated by written organizational policies; oriented to equity and compliance with law	<i>Ad hoc</i> and decentralized; oriented to problem-solving and financial performance of the organization
Allocation of pay and benefits	Administrative system based on: tenure and position in ‘internal labor market’	Individual negotiations based on: performance and position in external labor market
Role of HR Managers	Monitor legal environment and maintain good relations with employees and other stakeholders	Help organization respond ‘flexibly’ and quickly to market pressures

transformed, the employment relationship.<sup>3</sup> Organizations are understood as polities similar to a state, complete with the rule of law—union contracts and/or formalized personnel policies and practices—and promises of equal treatment under the law. Workers are viewed as members of that polity, ‘more of a citizen and less of a subordinate’ (Sutton and Dobbin, 1996, p. 794) who are represented by their unions or protected by due process procedures even in non-unionized organizations.

The legalization of the American workplace arguably proceeded in two phases, each initiated by landmark legislation. The Wagner Act (1935) solidified *collective bargaining rights* in the US. This law protected workers’ rights to organize and strike, and fostered the formalization of the workplace both directly and indirectly through support for unions (Kochan *et al.*, 1986;

<sup>3</sup> One of the central theorists of the legalized workplace, Lauren Edelman, argues that there has been a reciprocal transformation of legal institutions with the ‘managerialization of the law’ (Edelman *et al.*, 1999). We find her argument convincing but it is not central to our empirical investigation in this paper.

Stone, 2004). Unionized workplaces developed contracts with explicit rights and responsibilities for all parties: workers, their unions and management. Soon after, workplaces without union representation began adopting elaborate formal personnel systems, with formal job descriptions, job ladders, grievance procedures, etc. that paralleled union contracts in many ways (Baron *et al.*, 1986).<sup>4</sup>

The Civil Rights Act of 1964 furthered the legalization process by creating new *individual rights* that eventually created new expectations for fair and equal treatment in non-unionized and unionized settings alike. The Civil Rights Act of 1964 forbids discrimination but does not tell employers what they should do or not do in order to comply with the law. Instead, from the 1960s through the 1980s, organizations adopted various policies that explicitly forbid discrimination and that attempted to discourage discrimination by creating formal and uniform procedures for hiring, evaluating, promoting and disciplining workers (Edelman, 1992; Dobbin *et al.*, 1993; Sutton *et al.*, 1994).

The legalization of the workplace clearly extends beyond the basic rights laid out in employment law (e.g. the right to organize, the right to a non-discriminatory environment). Organizations quickly created new departments and staff positions to signal their attentiveness to these employment laws (Edelman, 1990; Edelman *et al.*, 1991). Organizations then interacted with the personnel profession, courts and regulators to decide which practices—including many practices that are not specifically named in the statute itself—would be accepted as symbols and signals of compliance (Edelman, 1992; Edelman *et al.*, 1999; Kelly and Dobbin, 1999). For example, ‘grievance procedures have emerged over the past few decades as the primary symbol of nondiscrimination’ but it was not until long after these practices had spread that the courts declared they could ‘insulate employers from legal liability’ (Edelman *et al.*, 1999, p. 407). Kelly and Dobbin (1999) found that maternity leave policies began to diffuse rapidly in the early 1970s, long before the Family and Medical Leave Act of 1993 mandated family leaves and even before the Pregnancy Discrimination Act of 1978 made it clear that discrimination against pregnant women was a form of sex discrimination. These examples show that many organizations change their policies and practices, in an attempt to signal

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<sup>4</sup>Some scholars view the formalization of non-unionized workplaces, with their legitimacy and apparent protections for workers, as a strategy for discouraging unionization (e.g. Edwards, 1979; Jacoby, 2005). Other scholars argue that government regulations during World War II prompted many organizations—unionized and non-unionized—to formalize their personnel systems in order to meet government targets and reporting requirements (Baron *et al.*, 1986). Regardless, there is agreement that there was a wide diffusion of formalized employment policies between the 1930s and the 1950s.

attentiveness to the law and to legal ideals, while the actual requirements of the law are being hashed out by the courts and regulatory agencies. These findings suggest that legalization affects even employment practices that are not specifically regulated by formal law.

*2.1.1 The legalized workplace and the management of FWA* Even though there are no laws that directly mandate or regulate FWA, institutional theory argues that legalization provides a creeping cultural model that may be applied to new practices (including FWA) as they arise. If the legalized workplace regime is firmly in place, the formalization and equal treatment associated with this regime will be taken for granted and unquestioned (Meyer and Rowan, 1977; DiMaggio and Powell, 1983; Powell and DiMaggio, 1991). Organizational policies may specify different treatment for different classes of workers, e.g. unionized and non-unionized employees, probationary and non-probationary employees, but promise equal treatment within those specified classes. To the extent that the legalized workplace regime is institutionalized in organizational routines and in managers' understanding of the world, we would expect that:

Hypothesis L1: Most organizations will write formal policies that lay out rules regarding FWA.

Hypothesis L2: Most formal FWA policies will implicitly or explicitly promise equal treatment of workers.

The legalized workplace regime also suggests that managers—particularly HR managers—are attuned to the legal environment and develop policies and practices to respond to it. While there is no law mandating, or forbidding, FWA in the US, the legal environment has implications for the application of FWA. FWA in the US are arguably affected by the Civil Rights Act, the Clean Air Act and state environmental laws, the Occupational Health and Safety Act and the Fair Labor Standards Act. The different employment laws may have encouraged or discouraged the spread of FWA and influenced the management of FWA, if managers looked to the legal environment as they developed and administered these practices.

First, feminist legal scholars have argued that, because women are still more likely to have extensive caregiving responsibilities in families, 'standard' work practices such as full-time work with set hours disproportionately disadvantage women and may, therefore, be discriminatory under Title VII of the Civil Rights Act (Williams, 2000; Travis, 2003; see also Acker, 1990). Claims that rigid work arrangements are discriminatory have met with some success in US courts (Williams and Segal, 2003), although there are also many cases where judges have not accepted these arguments. Other industrialized countries have also linked FWA to anti-discrimination law. The European Union Part-time

Work Direction developed out of case law arguing that, given women's disproportionate placement in part-time work, unequal treatment of part-time workers is a form of indirect sex discrimination (or disparate impact discrimination, as it is known in the US) (Heron, 2005). Australian tribunals and courts have promoted FWA as a way to avoid illegal discrimination based on 'carer status' (family responsibilities) (Bourke, 2004). These laws and cases provide cultural resources that may be employed by managers (in the US and elsewhere) attempting to understand and administer FWA.

Second, the 1990 Clean Air Act Amendments required large employers in severely polluted areas to create Employer Trip Reduction (ETR) programmes. In addition to providing discount passes for buses and assistance for setting up carpools, employers were encouraged to allow telecommuting and compressed-work-weeks as a means to reduce the number of car trips to their workplaces (Litvan, 1994; Reiman and Yohay, 1994). These requirements were rescinded in the 1995 Clear Air Act but, in the meantime, some cities and states passed local 'trip reduction ordinances', which also promoted various FWA (National Center for Transit Research, 2004).

In contrast to employment laws that might encourage employers to offer FWA, some employment laws conceivably constrain the use of FWA or make these practices difficult to administer. The Occupational Health and Safety Administration, a federal regulatory agency, issued a notice in 1999 that employers were responsible for the safety of their telecommuting workers and should, therefore, inspect their off-site workspaces. Confusion about employers' responsibilities for monitoring home offices and concerns about the costs of safe equipment (e.g. ergonomic chairs) for telecommuters may have discouraged organizations from creating FWA policies (Hoover, 2000). The Fair Labor Standards Act, which regulates working time for many US workers, may make it difficult to allow compressed-work-week schedules. This is because employees who worked a '9-80' schedule where they put in 80 hours during 9 work days and then took the 10th work day off would be eligible for overtime pay if they exceeded 40 hours in either week.

In summary, the legalized workplace regime has taught managers to pay attention to the legal environment when structuring and implementing employment practices. Although no US employment laws require or directly regulate FWA, these practices have been tied—in legal and management discourse—to sex discrimination law, environmental law, occupational health and safety law, working-time regulations and benefits regulations. The legalized workplace regime, therefore, suggests that:

Hypothesis L3: Most managers will perceive that employment laws prompt and/or constrain FWA, i.e. employment laws are relevant to the administration of FWA.

## 2.2 Restructuring of the workplace

While the legalized workplace regime emphasizes the development of employee rights in bureaucratized organizations, the restructured workplace regime claims that we have undergone a historical process of dismantling bureaucratic employment systems and replacing them with a market-based employment relationship and a flattened organizational hierarchy. The origins of these changes are commonly traced back to the 1970s, when increased international and local competition pushed organizations to reduce costs and respond more agilely to changes in market demands (Piore and Sabel, 1984). Also, changes in the stock market, including the rise of institutional investors, created new pressures for limiting labour costs and seeking short-term profits (Cappelli *et al.*, 1997; Jacoby, 2005). At the same time, a decline in unionization in the US and other industrialized nations allowed more flexibility in employment relations and the organization of work (Western, 1997; Knoke, 2001). One could also argue that the move to off-shore production illustrates employers' attempts to avoid legalization of the US workplaces,<sup>5</sup> while the recent expansion of exemptions to the Fair Labor Standards Act represents employers' attempts to reduce the impact of employment laws. The restructuring regime reacts to and rejects the legalization regime that preceded it (Cappelli *et al.*, 1997; Stone, 2004).

The organizational changes associated with the rise of this regime are variously referred to as the restructuring of work, the transformation of organizations, the rise of a new employment contract, the high road and low road, the dawn of a digital era in employment relations and more (Appelbaum and Batt, 1994; Cappelli *et al.*, 1997; Smith, 1997; Milkman, 1998; Kalleberg, 2001; Stone, 2004). While different authors emphasize different elements, there are some commonalities across them. We use the term 'restructuring' and identify two broad principles as the core of this phenomenon (Cornfield *et al.*, 2001). First, restructuring involves a transition (back) to market-based employment relations, as evidenced in the casualization of employment and the shift from collective to individualized negotiations over pay, benefits and the conditions of work. Second, restructuring involves the devolution of authority—including the thinning of the managerial ranks and decentralization of decision-making.

The restructured workplace regime involves 'the substitution of market solutions for the internal, administrative rules associated with corporate employment policies' (Cappelli, 1999, pp. viii–ix). In contrast to the legalized and bureaucratized workplace, in the restructured workplace regime, employment is understood as 'a negotiated relationship where the power shifts back and forth from employer to employee *based on conditions in the labor*

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<sup>5</sup> We thank one of the SER reviewers for raising this important point.

*market*' (Cappelli, 1999, pp. viii–ix, emphasis added). There are no promises about long-term employment, and there is widespread utilization of temporary and contract workers who are not protected by the legalization of workplaces (Cappelli *et al.*, 1997; Knoke, 2001). These changes, taken together, mean that there has been a dramatic shift in the risks experienced by workers (Jacoby, 2005; Stone, 2004).

To attract, retain and motivate workers without promising long-term job security, organizations have shifted to more contingent 'quid-pro-quo benefits [that] are by nature differentially available to individuals, depending upon the quo—upon what promise has been made or performance provided' (Edwards, 1993, p. 29; see also Cappelli *et al.*, 1997; Cappelli, 1999; Appelbaum *et al.*, 2000; Regini, 2003; Stone, 2004). The quid-pro-quo or performance-based negotiation of pay is now a common practice (Cappelli, 1999; Knoke, 2001), and it is increasingly the model for the distribution of 'alternatives to compensation' as well (Nadel, 1999). Compensation, some benefits and attractive work arrangements like FWA are often jointly conceptualized and administered as 'employee rewards programs' rather than as entitlements tied to one's membership in the organization (Federico and Goldsmith, 1998; Stone, 2004).<sup>6</sup> Indeed, about a third of American organizations have done away with across-the-board or seniority-based increases altogether (Cappelli 1999, p. 150), and contingent compensation schemes, based on performance and productivity, have become much more prevalent.

Management gurus promoting the restructured workplace regime also idealize a flatter hierarchy and the decentralization of employment decisions. The devolution of authority is seen as a way to increase managerial capacity to respond to changing demands. Flatter organizations theoretically give workers more autonomy through self-managed work teams, quality circles and job enrichment programmes (Osterman 2000; Appelbaum *et al.*, 2000; Cornfield *et al.*, 2001;). Decentralization of authority also occurs within the managerial ranks. Direct supervisors—not a central HR department—routinely hire workers, assign them to certain jobs, evaluate them, and fire them if necessary, operating units receive fewer policy directives, and line managers are more likely to report that their ideas are being put to use (Cappelli *et al.*, 1997, p. 42; Cappelli, 1999). However, research suggests that line managers often lack the skills, time

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<sup>6</sup> Benefits that are regulated by the US tax code and/or the Employment Retirement Income Security Act of 1974 (ERISA) are supposed to be broadly available to a range of employees, rather than being targeted at top executives only. These 'non-discrimination rules' provide some safeguards for employees' access to key benefits, but advocates of the restructuring regime pay little rhetorical attention to them and instead talk about compensation and benefits programmes as 'rewards' systems.

or training for making the personnel decisions that increasingly fall to them (Bond and Wise, 2003, p. 60).

The new emphasis on market-based, individualized negotiations and the decline in centralized decision-making may be coupled with a rise in intra-organizational inequality and a decline in management attention to equity. The old employment relationship redistributed rewards within organizations (e.g. from the more experienced to the less experienced) but the new practices, 'with their market and performance orientation, are eliminating those redistribution aspects and increasing inequalities' (Cappelli *et al.*, 1997, p. 11).

*2.2.1 The restructured workplace and the management of FWA* Scholars who have described (or prescribed) restructured workplaces have not paid much attention to the FWA we examine here.<sup>7</sup> Osterman's (1995) work is an important exception. He finds that organizations with 'high commitment' employment practices—including teams and TQM programs—are more likely to have family-friendly policies. This suggests a link between practices commonly associated with the restructuring regime and FWA (cf. Still and Strang, 2003). However, our primary concern here is not whether organizations with restructuring practices are more or less likely to have FWA in place; instead, we investigate whether the principles of the restructured regime guide the conceptualization and management of FWA.

The restructured workplace regime suggests that FWA will be administered quite differently than employment practices that were institutionalized in the legalization era. First, consistent with the principle of decentralization of authority, organizations will avoid formalizing FWA in written policies and instead welcome *ad hoc* arrangements that involve only workers and their direct supervisors.

Hypothesis R1: Most organizations will administer FWA with *ad hoc* arrangements, rather than formal policies.

Hypothesis R2: Most organizations will allow supervisors to decide which workers can use FWA.

Second, the shift to market-based negotiations between individual employees and employers, and specifically the rise of contingent ('performance-based') pay and perks, will influence how employees gain access to FWA. Consistent with the restructured workplace regime, FWA may be offered on a quid-pro-quo basis and managers may emphasize the 'business case' for FWA.

Hypothesis R3: Most managers will perceive FWA as strategic tools for recruiting, retaining and motivating valued workers.

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<sup>7</sup> More attention has been devoted to non-standard and contingent work, which is sometimes called flexible work (e.g. Rogers, 1995; Spalter-Roth *et al.*, 1997; Kalleberg *et al.*, 2000; Zeytinoglu, 2002).

### 3. Methods

To investigate the management of FWA, we collected detailed information from one or two informants in 41 organizations. This strategy is appropriate for exploring our hypotheses about how HR managers conceptualize and administer these new practices in a wide variety of organizations. We sampled establishments using the Dun and Bradstreet Market Identifiers database, which is arguably the most representative and practical sampling frame for this type of study (Kalleberg *et al.*, 1990).<sup>8</sup> We sampled establishments in 12 diverse industries in the California (Bay Area), Minnesota (Minneapolis-St. Paul), New York City and central New Jersey. These areas were chosen based on our own location (i.e. for convenience), but this strategy allowed us to check for regional variations because both US coasts and the Midwest are included in the study. The industries were chosen to provide variation in percentage of female workers, level of unionization and average establishment size; we chose the same industries as Kelly (2000, 2003) to allow comparisons with that survey data. In the last section of our findings, we use this variation to report on some exploratory analyses that begin to investigate the organizational and environmental traits associated with different FWA strategies.

The participating organizations included 12 manufacturing firms (5 computer manufacturers, 3 chemical manufacturers, 3 transportation manufacturers and 1 food manufacturer), 16 service organizations (5 business services firms, 4 transportation services firms, 3 health services organizations, 2 financial services organizations, 1 university and 1 wholesale trade company), 4 non-profit social services organizations and 9 government entities (6 local governments, 1 state agency and 1 branch office of a federal agency). The participating establishments varied greatly in size, with 9 organizations employing fewer than 100 workers, 12 organizations employing between 100 and 1000 workers and 20 organizations employing over 1000 workers worldwide.

We completed interviews in 46% of the organizations we contacted.<sup>9</sup> Although there are legitimate concerns about generalizing from a small sample such as ours, we believe that our sample is broadly representative of work establishments

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<sup>8</sup>Two of the earliest interviews were not drawn from this sample. These early interviews were conducted with HR managers we knew personally, as an informal pilot of our interview schedule. Because these interviews were conducted in basically the same way as our later interviews and provided very similar information, we include them here.

<sup>9</sup>This is a conservative calculation of our response rate. We completed 41 interviews, received clear refusals from 21 managers and received no answer from 28 managers. We treat this last group as refusals, even though we called some of them only twice because to time and staffing constraints.

included in the sampling frame. To check this, we used information in the sampling frame to compare the participating establishments to the non-respondents on size, sector and state. There were no statistically significant differences between respondents and non-respondents. We do note that public sector organizations were noticeably more likely than private sector organizations to participate and establishments in New York City were less likely than those in New Jersey, California or Minnesota to participate. Future research would ideally examine sector and regional differences in FWA strategies, using a larger sample.

Interviews were conducted in person by the authors, from May 2000 to August 2001, with the early interviews conducted by both authors to insure reliability. The interviews lasted between 50 minutes and 4 hours, averaging 1.5 hours. These interviews provide detailed information about decisions to write (or to avoid writing) formal FWA policies, the content of those policies, utilization of FWA, managers' perceptions of FWA and interesting situations or disputes related to FWA. The discussion of FWA ended with questions about whether any laws or regulations affected FWA and, if so, what the impact was. We specifically waited until the latter part of the interview to bring up employment laws in order to get a sense of the legalization of this arena of employment relations from the point of view of the respondent. Appendix A includes an abbreviated interview schedule. In addition to questions about FWA, the interviews covered family leaves, dependent care benefits, an overview of the organization and the workforce at that location, and a brief discussion of the respondent's career and current responsibilities. Respondents were generally mid-level managers with responsibility for a variety of HR policies and practices.<sup>10</sup>

Transcripts and interview reports were reviewed several times to identify themes and different strategies for managing FWA in the responding

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<sup>10</sup> Of the 45 respondents (in 41 organizations), only five did not have manager, director or vice-president in their title. The remaining five respondents included three lower-level employees (an 'HR assistant', an 'HR generalist' and a 'diverse-work-force specialist') as well as a comptroller and a respondent whose title was 'Public Works Laborer' but who had sole responsibility for HR matters in a small city. In addition to having the title of the respondent, we also asked respondents whether they were 'more of a decision-maker or an administrator' or whether they 'fill[ed] both roles'. The questions about why policies were written at a certain time or in a certain way were asked of respondents who had a decision-making role; most reported being in that role. Questions that administrators were more likely to know (e.g. 'About how many employees used' a FWA last year) were asked of all respondents, but we asked decision-makers whether there was someone else who could look this up or get that information for us if they did not know those details. As noted below, there was remarkably little tracking of FWA in these organizations and none of our respondents, at any level, had firm numbers about the use of FWA.

organizations.<sup>11</sup> Analysis involved reviewing transcripts by calling up coded passages and also repeated readings of the entire transcripts. We provide counts of the prevalence of certain practices and question responses, but we do not make strong claims about the generalizability of these findings to larger samples of organizations. We believe our research strategy is better suited to exploring the variety and content of FWA management and that future research using larger, nationally representative samples is needed to know the prevalence of different types of policies and practices with certainty.

In seven organizations the HR manager reported that no FWA were allowed. We were not able to gather information about FWA practices that are completely 'below the radar', available informally to a few workers, nor can interviews with HR managers provide direct information about workers' or line managers' experiences and opinions. We acknowledge this limitation but believe that our interviews provide important information about the management of FWA and its implication for the utilization of these benefits by a wide range of workers.

We also systematically reviewed the management literature on FWA between 1998 and 2001 in order to learn what messages professional associations and management journals were giving managers about FWA. Neo-institutional research on organizational change points to the importance of professional associations and journals in propagating new practices (e.g. DiMaggio and Powell, 1983; Dobbin *et al.*, 1993; Edelman *et al.*, 2001). Our respondents also consistently reported that they learned about new practices and policy options through these sources.

#### 4. Findings

We initially expected that FWA would be *either* formalized as rights available to all workers, as implied by the legalization regime (Hypotheses L1 and L2), *or* that FWA would not be formalized and would be available informally to those employees who could negotiate them (Hypotheses R1 and R2), as implied by the restructuring regime. Our expectations were based on the assumption that formalization and universal access are intimately related. Specifically, we expected that formalization of HR policies implied universal entitlement (to all workers or to pre-specified categories of workers) and, conversely, that individual negotiations would appear as a substitute for formal policies in organizations

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<sup>11</sup> Both authors inductively coded the interviews, comparing and refining our understandings of the meaning of codes through discussions. Formal coding was then conducted by a graduate research assistant in close consultation with the first author. Questions about coding were discussed and resolved jointly by the research assistant and authors; therefore, we do not have formal inter-coder reliability statistics.

that had not written things down (Selznick, 1969; Stinchcombe, 2001; Reskin, 2000, 2003).

Our research on the administration of FWA reveals the clear and strong influence of the restructured workplace regime on these new practices, as well as suggestive evidence that the legalized workplace regime still influences the administration of FWA in subtle ways. We find extensive variation in the practical details of how FWA are administered, but a remarkable consistency in the core elements of FWA governance: Supervising managers determine access to FWA in all cases. In other words, Hypothesis R2 is supported regardless of whether practices are administered in an *ad hoc* fashion (as suggested by Hypothesis R1) or formalized in written policy (as suggested by Hypothesis L1). Policies about FWA have been written to protect managerial discretion and avoid creating ‘new entitlements’ for employees. In accordance with the market metaphor central to the restructured workplace regime and Hypothesis R3, managers routinely describe how FWA are used as a reward for favoured workers. In contrast to Hypotheses L2 and L3, equal treatment of workers is not promised and FWA are rarely connected to the legal environment. However, some of the trappings of the legalized workplace regime are still evident in the prevalence of formal, written policies and in the rhetorical attention to job requirements and business necessity.

#### 4.1 Formalized discretion and other management strategies

The classic employment policy from the legalized workplace regime has been eschewed in the management of FWA. None of the 41 organizations in this study provided a formalized right to FWA. Instead, the most common way to manage FWA is through what we call formalized discretion—formalized policies that explicitly set up negotiations between managers and individual workers about access to FWA.

Seven organizations did not allow FWA, even informally. Thirteen organizations had only informal and *ad hoc* FWA that were not written down as company policy. These arrangements were presented either as special accommodations to deal with a temporary problem (such as an illness or changing childcare providers) or as part of the ‘caring’ culture or the ‘professional’ culture in the organization. For example, an executive in a new media company commented that flextime had been part of the organizational culture from the beginning: ‘I think the company always had some sort of flextime. It was founded by four Stanford professors, and they were software engineers. Two of them certainly didn’t subscribe to the nine to five hours.’

Twenty-one organizations formalized FWA with a written policy that makes it clear that managers ultimately decide on the use of FWA. Thirteen

organizations had a simple policy statement introducing FWA and telling employees to ask their supervisors about their options, while eight organizations provided more detailed guidance to managers and employees. In the latter organizations, employees often saw a list of questions to ask themselves before approaching their manager with the initial request. For example, a major bank includes a list of ‘Things to Consider’ and ‘Things Your Manager Will Need to Consider’ in the booklet outlining FWA. A few of the largest organizations offer even more help to workers, by creating an Intranet database with common questions and the necessary proposal forms or by providing similar information through a toll-free helpline or brochures.

In these organizations, the procedural guidelines and well-publicized policies imply a limited right, the *right to ask* for FWA. Respondents in these organizations discussed a ‘right to ask’ or explicitly stated that all employees may request FWA. For example, one HR manager at a major financial institution told us: ‘the policy says every employee is entitled to have this discussion with their manager, not every employee is entitled to get a flexible work arrangement.’ She later explained: ‘Managers aren’t required to say ‘yes’ to every arrangement, but they are required to sit down and have a discussion with an employee and really come up with a thoughtful reason’ for approving or rejecting the FWA request. A bank’s brochure on FWA states: ‘while any team member may apply for a Flexible Work Arrangement, this option will not be feasible for all work situations.’ A major consulting firm allows ‘all employees with two years experience to apply for a flexible work schedule’. To reiterate, though, none of the organizations we studied promise workers—or even certain categories of workers such as full-time, salaried workers—FWA. As they have formalized FWA, these organizations have carefully maintained managerial discretion over these decisions.

## 4.2 Why no formalized rights?

### 4.2.1 Avoiding legitimacy with *ad hoc* arrangements

Managers in many of the organizations with *ad hoc* FWA practices believed that formalization would increase the legitimacy of FWA practices and, therefore, increase employees’ comfort in requesting FWA.<sup>12</sup> In three organizations, managers had actually

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<sup>12</sup>We asked managers at 9 of the 13 organizations with *ad hoc* practices why they had not formalized their FWA. Seven of these nine respondents conveyed the idea that formalization would increase legitimacy and the use of FWA. Additionally, one respondent worried that formalization would create unnecessary rules and reduce managers’ ability to manage as they saw fit. The ninth respondent reported that ‘We just haven’t gotten to it, I think. I think that no ones been given the responsibility to do that. And at some point I will probably just do it myself.’ This question was skipped in the remaining

drafted FWA policies and then chosen not to ‘roll them out’ or not to publicize them to employees. For example, the HR manager at a mid-sized advertising agency established criteria for evaluating whether flextime, telecommuting and reduced-hours schedules were feasible and she shared those documents with department managers. However, she reported that there is no policy announcing these options to workers because:

My philosophy on putting these policies out there is that we’re opening a can of worms, because there’s going to be 10 other people in line within minutes. If we put out a thing that says, ‘All right, here’s our policy on flextime,’ the line would be out the door and down the hall of people wanting to do it.

This manager believes it would be more difficult to keep FWA limited to highly valued and respected workers if it was formalized. She notes that, in the *ad hoc* system,

I think that the people that have come forward have [the] sort of seniority, a long term commitment here and good performance, mature, and it has worked beautifully *with those people* (emphasis added).

Another manager, at a large manufacturing firm, reported that new guidelines for FWA would not be distributed ‘desk-to-desk’ because top management feared that ‘everybody will pick up the phone’ and ask for FWA if the formal policies were shared with employees. Like Selznick (1969) and other scholars of the employment relationship, these managers understand that formalization creates expectations of rights among workers. In response to this conceptual linking of formalization and entitlement, these managers decided to continue with *ad hoc* arrangements that were not publicized by management.

The link between formalization and the legitimacy of FWA was made by some managers in organizations with formalized policies as well. An executive at a large bank explains that they wrote FWA policies in the early 1990s because

we had lots of employee feedback about flexibility being important to them. We had offered them informally, but in the absence of a formal policy, people got messages that this wasn’t a good thing.

[Interviewer: So you formalized it in order to increase the implementation?]

Respondent: In order to increase implementation but also to send a strong signal that flexibility is part of our culture, whether or not it was a reality at the time.

A manager at a large professional-services firm noted that publishing a brochure about how to pursue FWA both reassured workers that the company was serious about FWA and pushed the firm further towards its aspirations. She said:

I think it really needs to be written down . . . that you really kind of have to draw a line in the sand and say here we are and get some written policies and practices down . . . We do want to have something published so that an employee [knows about these options] . . . So *they see it and then people start believing it and working toward it.*

It is important to note that we cannot directly examine whether formalization indeed increases utilization because *none* of these organizations—even those with formalized policies and elaborated procedures for requesting FWA—could provide information on the number of employees using various FWA.<sup>13</sup> Also, previous research on FWA utilization does not provide clear information on whether FWA were formalized as policies or ‘offered’ only on an *ad hoc* basis.

**4.2.2 Avoiding entitlements with formalized discretion** In contrast to Hypothesis L2’s prediction, even managers who did write FWA policies have deliberately avoided creating new employee rights—what some describe as new ‘entitlements’—in their FWA policies. The legalized workplace regime has not only receded in this arena of employment relations; it has been actively resisted by management. One HR manager, in an international import/export business, explains that FWA are “really up to the individual manager. The one thing that we’ll say to managers [is] ‘Employees don’t have the right to flex. It depends on their job and it depends on how you [i.e. the manager] want to manage the department.’” Similarly, the vice-president of a bank stresses that discussions

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<sup>13</sup>This in itself is a surprising finding, which may represent a reluctance to create a paper trail in case of litigation (Bisom-Rapp, 1999), the desire to avoid a new bureaucratic burden for managers or the decoupling of formal goals (i.e. motivating and rewarding valuable workers) from organizational practice (i.e. examining whether FWA are an effective tool for this goal) (Meyer and Rowan, 1977). Our impression is that HR managers are busy with other tasks and not eager to investigate utilization patterns unless pushed to do so. They are also stymied by the existing HR software packages, which apparently do not have easy ways to record use of FWA. Since our interviews, we have met work-life consultants who are marketing ‘FWA tracking’ programmes to large organizations but no organizations in our sample had these in place in 2000 and 2001.

between workers requesting FWA and their managers are ‘not an entitlement type of conversation but it’s really a conversation about how you could do your job differently’. In addition to the 4 respondents who explicitly derided entitlements, 30 (of the 34 respondents in organizations that allowed FWA) spoke positively of managerial discretion or described discretion as necessary for their management of FWA.

Professional journals and magazines for HR managers are even more explicit in their antipathy towards new ‘entitlements’. An article in *Workforce* says,

Work/life initiatives are very important to employees. All the newest employee commitment studies make that clear. However, continuing to add one work/life initiative after another could be a problem down the line if workers start to see all the extra help and flexibility as simply another entitlement. (Laabs, 1998, p. 55)

In an article that provides guidelines for setting up FWA, *HR Focus* instructs, ‘Information about FWAs should be consistent and support the message that FWAs are an option, not an entitlement’ (Rose, 1998, p. S1; see also O’Daniell, 1999). The Society for Human Resource Management (SHRM, the largest American professional association for HR managers) provides a sample policy for telecommuting, which includes this anti-entitlement message:

Telecommuting is a voluntary work alternative that may be appropriate for some employees and some jobs. It is not an entitlement; it is not a company wide benefit (Hasting, 1999).

The contrast between FWA policies and organizational policies that do involve ‘entitlements’ was also very clear in respondents’ discussion of the Family and Medical Leave Act (FMLA). Given a clear legal mandate (as with family leaves), managers recognize entitlements that constrain their choices about how to deal with workers’ needs. Under this law, many American workers are entitled to up to 12 weeks of unpaid leave to care for an infant, care for a seriously ill relative or deal with the worker’s own serious illness.<sup>14</sup> Respondents indicated that both family leaves and FWA involve disruptions in the normal coordination of work and that both are commonly understood as ‘family-friendly’ or ‘work–life’ policies, but they are handled very differently by these organizations. Although we know what the family leave law requires, we asked whether managers have discretion over granting family leaves. Almost all of the

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<sup>14</sup>The basic coverage rules for the federal family leave law are that employees must have been employed in a work establishment with at least 50 workers within a 75-mile radius for at least 1250 hours and at least 1 year.

respondents explained that they did not have any discretion because the law gave employees' clear rights to family leaves.<sup>15</sup> Examples of these responses included an explanation that there is no discretion with family leaves 'because [it] is protected by the Family Medical Leave Act, so they're entitled to take that,' a statement that 'That's a federal law. You don't have a choice,' and a comment that leaves are 'really set out for everyone, I mean it's the law.' One respondent reported that the HR department handled family leaves (rather than supervising managers) because 'we don't want a manager saying the wrong thing about leave, because leaves now are protected by FMLA.' In contrast, when we asked about FWA and managerial discretion (after allowing the respondents to describe their policies or practices in their own terms), 40 of our 41 respondents replied that managers had significant discretion in determining who could or could not use FWA. An HR manager in a state agency makes a clear distinction between the two types of family supportive policies:

Family leaves are regulated by the federal law, state law, and state policies. Anyone who provides adequate documentation 'gets it' and there is no latitude or discretion. It is a matter of law, in contrast to flextime... People are entitled to it [i.e. family leave], they feel entitled to it, and they know about their rights.

The law—and the way a legal rule overrides managerial discretion—is the most distinctive difference between these two 'work–family' policies.

#### *4.3 Only the vestiges of legalization in the management of FWA*

Because a number of US employment laws might be relevant to FWA and because legalization suggests a broad attentiveness to legal concerns, we hypothesized (Hypothesis L3) that concern with employment law would shape the management of FWA. However explicit references to employment law were largely absent from the interview discussions of these practices. Our respondents talked in detail about how employment law affected other employment practices (e.g. family leave, sexual harassment programmes), but they did not feel the long arm of the law pushing them to adopt FWA or leading them to manage FWA in particular ways. This is the case even though we usually discussed

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<sup>15</sup>We began asking about discretion with regard to FMLA after realizing that discretion was built into formalized FWA policies. Of the 26 interviews that included this question, 25 respondents said there was no discretion about FMLA or explained that there was no discretion about the first 12 weeks of leave, because that was legally mandated, but that managers could decide whether to approve extended leaves. The final respondent said she supposed there was discretion with family leaves but she had never seen one denied.

FWA immediately after discussing family leave and the impact of the Family and Medical Leave Act of 1993 on the organization.

After hearing about organizational practices and policies for FWA in their own words, we asked whether any laws affected their decisions to allow, or not to allow, FWA or their administration of FWA programmes. Most managers responded to this question by saying something like ‘Not that I can think of’ or ‘Not that I’m aware of’. The exceptions identified *legal barriers* to offering certain FWA, including the Fair Labor Standards Act (n = 6), Occupational Health and Safety Administration rules (n = 3) and (unspecified) pension rules (n = 1) that made part-time employment for older workers challenging. No respondents brought up the sex discrimination law and only two respondents alluded to the idea that providing equal opportunities to women required changing the way work is done by allowing part-time schedules or other FWA. This is an interesting omission because FWA have been conceptualized as a way to advance equal opportunities in the face of gendered family responsibilities by US scholars (e.g. Williams, 2000; Rappoport *et al.*, 2002; Williams and Segal, 2003; Travis, 2003) and in other nations’ employment laws (Bourke, 2004; Hegewisch, 2005).

*4.3.1 Criteria for decision-making* Our respondents did not voice anti-discrimination concerns directly, but these worries may be at the root of their guidance to supervisors about the criteria for FWA decisions. When we asked respondents what supervisors should consider when making FWA decisions, we heard that managers’ should decide whether FWA are feasible based on their assessment of how the work can be done. Managers in 26 of the 34 organizations emphasized job requirements as the primary criterion. One manager said the questions to consider are:

Does it meet operational requirements? It’s always about ‘Can you still get the job you need to get done [done]?’ So it’s really about operational requirements.

This quotation comes from a huge high-tech manufacturing company, but the same ideas were voiced at all kinds of organizations.

Management writers and professional associations advocated focusing on job requirements and sometimes claimed that criterion would protect employers from complaints and legal risks. For example, Sandra Sullivan, founder of a Connecticut consulting firm called Flex-It, claims in a *Management Review* article that:

‘You must institute a flexible process that is accessible to everyone,’ says Sullivan. ‘That doesn’t mean everyone can be flexible; it means

everyone can write a proposal,' she clarifies. The employee then submits the proposal to the manager, who must make sure not to engage in a personal dialogue, but to keep the discussion business-based... If you keep the decision business-based, there's no opportunity for an employee to come back later with a lawsuit. (Capowski, 1996, p. 17)

The rhetorical attention to job requirements and business needs is reminiscent of how employers defend themselves in discrimination cases involving disparate impact (or indirect discrimination) claims. In US courts, facially neutral practices that have a disparate impact on protected categories of workers are not deemed discriminatory if the employer can show that those practices are related to the job and constitute a necessary part of doing business (e.g. Edelman, 1990; Williams and Segal, 2003). It appears that anti-discrimination law has taught these HR managers to frame their decisions in terms of job requirements and business necessity, even when the specific practices at hand have not been interpreted as part of anti-discrimination law. However, these legal concerns are coded rather than explicit. Therefore, while we believe it is plausible that legal concerns are still influencing the administration of FWA in subtle ways, we recognize that the evidence of the legalization regime's influence is not definitive.

When organizations excluded certain groups of workers a priori from FWA, these exclusions seemed to be based on management's beliefs that FWA were not feasible for those occupational groups or, less commonly, on union representation. In 10 of the organizations (out of 34 that allowed FWA), respondents reported that certain occupational groups were not eligible for FWA. Three organizations excluded production workers from all FWA and, in an additional two organizations, production workers could only ask for a compressed-work-week schedule (i.e. four 10-hour days per week). Additionally, two hospitals excluded those doing patient care and one advertising agency excluded 'planners' who were the primary contact people for clients.<sup>16</sup> In addition, two cities excluded unionized workers who had not negotiated FWA in their contracts. These two cases suggest that the legalized regime may still be at work in the management of unionized workers while the restructured regime increasingly structures employment practices for non-union workers.

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<sup>16</sup> Although we did not discuss the reasons for excluding categories of workers in detail, managers may have believed that the continuous, interdependent work involved in assembly work and the need to be available to patients and clients made it impractical to have different starting and stopping times or to work from home.

Some respondents (N = 7) also emphasized the need for consistent, fair and justifiable treatment of employees; we view this concern as an additional ghost of the legalization regime. These HR managers instructed supervisors to make consistent decisions and ones that could be justified, if they were challenged. One HR manager explained that her guidelines to supervising managers are ‘Just consistency. They don’t allow one person to do it and one other [pause] somebody not. So, just be consistent.’ Another respondent claims that managers do not have to treat people in exactly the same way, as long as they have a reason for their decisions. He says FWA decisions are up to managers ‘as long as you’re consistent. So, you know, this way I can always say, “I didn’t give it to you because . . .”’ This respondent, and several other managers we talked to, equates consistency with having a valid, i.e. non-arbitrary and accountable, reason for one’s decisions.

Managers and management writers present ‘job requirements’ as an objective, technical and neutral criterion for deciding on FWA. Business needs (as assessed by managers) are also seen as objective concerns. In contrast, a substantive consideration of workers’ needs is sometimes viewed as a threat to objectivity because it introduces the possibility of unacceptable inconsistency. For example, the vice-president at a major bank tells us:

[We] say that the reason shouldn’t matter, so that a manager is not in a position in which, you know, ‘I want a flexible work arrangement because I’ve just had a baby,’ but one of you wants a flexible work arrangement because you’d like to volunteer a day a week. So we don’t want managers making value judgments about ‘Gee, the volunteer thing, that’s kind of optional but the baby thing, well that’s like a real thing.’ So we’re very clear that it’s not the reason that’s the driver, it’s whether or not you can do your job in a different way.

To summarize, constructing ‘job requirements’ as the primary criterion for deciding on FWA allows managers to retain managerial authority—by determining who can use FWA—at the same time that they show some deference to legal ideals by following consistent and apparently non-discriminatory procedures for considering workers’ requests.

#### *4.4 Market ideas in managerial decisions about FWA*

The restructured workplace regime identifies a move towards market-based employment relations including contingent pay and benefits as a method for motivating workers in the absence of long-term employment. FWA play a part in that system, according to our respondents. Consistent with our prediction in Hypothesis L3—and despite the stated criterion of job requirements—about

half of our respondents (N = 17 of 34 that allowed FWA) explicitly said that managers are more likely to grant FWA to valued workers as both a reward for past performance and an inducement for continued commitment.

The administration of FWA reflects the market mentality inside organizations, in which workers who are ‘in demand’—either because of their particular skills or the tightness of the labour market—negotiate what they want while less-valued workers get much less. In a business services firm, the guidelines to managers direct them to consider the employee’s performance rating when deciding on FWA. Most policies did not include explicit guidance about using employee performance as a criterion, but managers in the interviews routinely—and quite matter-of-factly—described performance as a central part of the decision-making process. For example, a manager in an advertising firm says that FWA really depend on the manager’s evaluation of the worker (not the requirements of the job):

I would say that if the manager values the person, they make it work . . . Most of [the managers] around here are pretty accepting of it if the person has been a strong performer. Now, if they haven’t, there’s no incentive to do it. So it really is a performance-based thing.

An HR manager in another business services organization—one with award-winning work–life policies—stresses the importance of being a high performer and a valued worker in order to be granted FWA.

. . . Unless you’re a really high performer who has a skill that the company really needs, and if you do, you have a lot of leverage. They’ll do whatever you want . . . as long as you continue your performance. But if you’re, you know, an average or above average performer, it’s not as easy to get what you need.

Despite the formal policies this organization advertised to the public and prospective employees, in practice, the manager recognized that FWA were granted selectively as a reward for excellent performance.

Several managers (N = 7) also emphasized that tight labour markets increased ‘the need to keep talented people on staff’, as a manager at an advertising agency explained. Another example of the way that individual performance and labour market conditions work together came from a vice-president of a major bank who noted that:

Even stupid managers realize they’re better off retaining this person on a 4-day-a-week arrangement than losing them all together. Although it isn’t always true. I mean, [if] the person that’s a marginal performer, the manager’s going to say no [to the FWA request].

The quid-pro-quo system of managing FWA is implied in these discussions of granting FWA to high performers (e.g. ‘They’ll do whatever you want . . . as long as you continue your performance’). In some organizations, the benefit to the organization must be presented explicitly in the negotiations for FWA. For example, a bank’s policy states: ‘Flexible work arrangements must *demonstrate a clear benefit to the business environment* and be based primarily on job function, so such arrangements may not be available to all team members’ (emphasis added). A manager in an advertising firm describes a successful ‘business case’ presented by a worker requesting FWA: ‘She did something near and dear to our hearts: included a costs impact statement.’ Another HR manager, in a state agency, instructs her managers ‘make sure if you’re going to reject it, you’ve got good reason to reject it, and typically that’s because the employees have not made a good enough case of any benefits other than for their own convenience.’ This quote conveys the greater weight given to organizational needs than to employee needs, which are discounted here as a ‘convenience’.

In short, despite the stated emphasis on allocating FWA according to job requirements, the majority of these managers acknowledge that, in their organizations, FWA function as a strategic tool to reward and motivate high performers.

#### 4.5 *An exploration of which organizations do what*

Our research has documented the ways that FWA are administered in US organizations and interpreted these practices in light of current management regimes. Another important question is ‘What predicts whether organizations administer FWA policies and other new employment practices with *ad hoc* arrangements, formalized discretion or fully formalized rights?’ Neo-institutional studies suggest that larger organizations, public sector organizations and unionized organizations were the most affected by legalization and its call for formalized policies and procedures (Edelman, 1990, 1992; Sutton *et al.*, 1994; Sutton and Dobbin, 1996). We, therefore, hypothesize that these organizations would either create more formalized FWA or eschew FWA altogether. In other words, larger organizations, public sector organizations and unionized organizations would be less likely to handle FWA with *ad hoc* arrangements. With our small sample, we were not surprised that there were no statistically significant differences between organizations with different approaches to FWA. However, our findings are suggestive and support the hypotheses suggested by neo-institutional research. Future research using larger, nationally representative samples should follow-up on these questions.

We find that organizations with *ad hoc* arrangements are smaller, on average, than those that do not allow FWA and those with formalized discretion. The

mean establishment size of organizations with *ad hoc* FWA is about half that of organizations with no FWA and of organizations with formalized discretion policies. A similar pattern is seen for organization size, with *ad hoc* organizations having a mean size four times smaller than the organizations with formalized discretion policies. Our data also suggest the possibility of an interaction of size and the demands of the work process, but we cannot test interaction effects with such a small sample. Six of the seven organizations that did not allow FWA at all were small and provided non-professional services directly to clients or citizens. The need to respond to clients' changing needs with a small workforce may make it difficult to manage FWA. This generalization should be tested with other data. On the other end of the spectrum, all eight of the organizations that provided extensive FWA guidance were large 'new economy' firms, i.e. organizations in the service sector or in high-tech manufacturing. We speculate that formalized discretion is particularly attractive to large organizations that are embedded in the 'new economy' but also responding to the bureaucratic pressures that come with size—whereas small organizations in these sectors (e.g. high-tech start-ups and small professional services firms) may not feel a need to write policies of any type. This claim should also be tested with a larger sample of organizations.

Bi-variate analyses suggest that public sector organizations and unionized organizations are more likely to have formalized discretion policies or to disallow FWA, and less likely to manage FWA with *ad hoc* arrangements. Among the public sector organizations 25% did not allow FWA, compared to 15% of the private sector, and 62% of public sector organizations had formalized discretion policies, compared with 49% of private sector organizations. *Ad hoc* arrangements were found in only 13% of public sector organizations but 39% of private sector firms. Unionized organizations are more likely to avoid FWA completely (25 vs. 10%). When they do allow FWA, unionized organizations are less likely to set up *ad hoc* arrangements (25 vs. 38% of non-unionized organizations). Although not statistically significant, these findings suggest that there continues to be substantial differences in the employment relationship across sectors and unionization status. Importantly, though, none of the organizations—including the government agencies and those with collective bargaining agreements—had formalized rights to FWA.

## 5. Conclusion

Flexible work arrangement initiatives are increasingly common in US workplaces but researchers had not investigated how these programmes are administered. We asked whether and to what extent the central tenets of the legalized workplace management regime or the restructured workplace regime are reflected in the

administration of FWA. Our study of the governance of FWA reveals the growing influence of the restructured workplace regime, and only the hints of the legalization regime's influence in the continued preference for formalized policies and the focus on job requirements as the primary criterion for FWA decisions. Even the written FWA policies are missing the key elements of meaningful legalization: declarations of employee rights and the possibility of holding the organization accountable to some outside authority (Sturm, 2001; Reskin, 2003). In contrast to the suggestive evidence that legalization may still be subtly influencing FWA, the central tenets of restructuring appear very clearly in the management of FWA. Decisions about FWA are explicitly decentralized, with the supervising manager given the authority to manage the work process as he or she sees fit. Furthermore, our interviews suggest that—in practice—managers administer FWA as quid-pro-quo benefits, available to those workers who have 'earned them' through superior performance. Contingent access to FWA seems to be used to induce commitment from workers in the context of job insecurity and rapidly changing organizations.

Our research makes four specific contributions to theory and research on the employment relationship and FWA in particular. First, our findings suggest that some common questions about employment policies do not capture important aspects of organizational governance today. Scholars often ask, first, why do some organizations adopt certain personnel policies while others do not and, second, which workers actually use the benefits or receive the protections provided by these policies. Both questions assume that, except in the smallest organizations, the employment relationship is regulated by written policies that a priori render some groups of employees eligible for a certain protection or benefit—that employment policies are structured in accordance with the legalization regime. We show that these assumptions are incorrect, at least in the case of FWA and perhaps for other new workplace practices such as phased retirement and extended personal leaves. More generally, we suggest that future research explicitly examine which aspects of the employment relationship are formalized and what formalization implies for different practices and in different national contexts (Marsden, 1999).

A second, and related, point is that our findings reveal a methodological problem with previous studies of FWA. Organizational surveys implicitly assume that the legalized workplace regime is at work by assuming that written policies promise protections or benefits to all employees or, at least, to specified groups of employees such as non-unionized workers. We show that survey questions such as 'Do you offer flextime?' or 'Do you have a policy about flextime?' are not valid measures of the employees' access to FWA because the policies adopted in these organizations deliberately and explicitly allow supervisors to decide, on a case-by-case basis, which workers may use FWA. Additionally, our findings

suggest that quantitative research should ask which organizations adopt which management strategy (i.e. *ad hoc* vs. formalized discretion vs. formalized right) for administering FWA. Our findings also raise the question of how negotiations between employees and supervisors unfold in organizations with different approaches to managing FWA. Qualitative research based on observations of FWA negotiations in different organizations could elucidate what criteria managers and employees use in their claims-making and justifications and provide even more grounded evidence of the influence of the restructuring and legalization regimes in workplaces today.

Third, our research helps solve the puzzle of why so few workers use the FWA that are presumably available to them (Hochschild, 1997; Fried, 1998; Epstein *et al.*, 1999; Blair-Loy and Wharton, 2002, 2004; Still and Strang, 2003). The assumption has been that, if there is a formal policy ‘offering’ FWA and there are workers who feel constrained from using FWA, there is a problem—a decoupling of policy and practice—in the implementation of the policy. However, we contend that policies are written in ways that actually create these constraints and limit the use of FWA. In other words, we show that the limited utilization of FWA is built into the company policy itself. This finding suggests a need for new theoretical concepts that go beyond a dichotomy of formal policies and informal practices (Stinchcombe, 2001), as well as for additional research that empirically investigates what formalization looks like today.

Fourth, this work helps solve the empirical puzzle of why there is such unequal access to FWA. Earlier examinations of FWA have found that women, non-white workers, less educated and less-skilled workers are less likely to have access to FWA in the US (Capowski, 1996; Glass and Estes, 1997; Beers, 2000; Golden, 2001; Yang and Reid, 2005). Scholars have assumed—and we concur—that these groups of workers are less likely to be employed by organizations that allow FWA. In other words, less privileged workers are less likely to work for generous employers. However, we contend that there is also *intra-organizational and intra-occupational* variation in access to FWA, even in organizations that have adopted formal FWA policies. Some occupational groups are excluded from some organizations’ policies, as we described. But even when that is not the case, these policies allow managers to grant FWA to some valued workers while denying it to others in the same occupational category.

There are good theoretical and empirical reasons to believe that supervisors’ assessments of workers’ performance are affected by the workers’ race, sex and family status (Cejka and Eagly, 1999; Ridgeway and Smith-Lovin, 1999; Reskin, 2000; Ridgeway and Correll 2004; Correll and Benard, 2005). Ethnic and racial minorities, and women, especially mothers, may find it more difficult to be recognized as a ‘high performer’ and to win FWA under this system (Weeden, 2005). Ironically, workers with extensive family responsibilities, in particular,

might improve their performance with the benefit of FWA that allows them to work when and where they are most productive and focused.

Scholars studying workplace inequality generally see formalization as a tool for limiting managerial discretion and consequently reducing inequality (Bielby, 2000; Reskin and McBrier, 2000; Sturm, 2001; Reskin, 2003). However, the formalization of discretion may have the opposite consequences as formalization that reduces discretion. Formalized discretion seems to institutionalize and legitimize unequal access to attractive work conditions, rather than challenging patterns of inequality. Our findings suggest that scholars of the employment relationship need to investigate more deeply what ‘formalization’ means in different contexts and whether and when it has redistributive effects.

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## Appendix A. Abbreviated Interview Guide

The interview was introduced as follows:

This research examines what companies are doing (formally or informally) to help workers with their family responsibilities. We know that HR managers often balance the needs of workers, the needs of the organization, and, sometimes, demands from the government. We want to know:

- (a) why you do what you do (and perhaps why you've chosen not to do some things), and
- (b) how family programmes actually work here—what is involved with administering and managing family leaves, dependent care programmes and flexible work arrangements.

The following questions were asked about each FWA practice, i.e. flexitime, telecommuting, job-sharing or other voluntary part-time work, and other arrangements that respondents brought up:

1. Do you have [FWA practice] here? If no: Did you ever consider it? Why did you decide not to pursue this? If yes: When did you first allow [FWA practice]? Why did you start allowing [FWA practice]?

2. Is there a written [FWA practice] policy? If no: Did you ever consider it? If yes: Why did you decide to formalize this with a policy? What does the policy say? Why did you set up the policy in this way?
3. How do workers learn about [FWA practice]? What is the process for applying for it, if any?
4. Do managers have discretion about who gets [FWA practice]? What instructions or guidance do you give to managers, if any? What are the criteria used for deciding about [FWA practice]? Are any groups excluded?
5. How are disputes handled? Have there been any interesting situations with [FWA practice] recently?
6. About how many workers used [FWA practice] last year? Who tends to use it (specific work groups or demographic groups)? Do you have the sense that more workers would like to use [FWA practice] than those who do? What keeps them from using it? Do you track the use of [FWA practice] or what happens to workers who use it?

The discussion of FWA ended with a more general question: Do any laws or regulations affect your policies about flexible work arrangements? Which ones? How?