

Conversations with the Experts

Workplace Flexibility 2010



Chai Feldblum

Bio: Professor Chai Feldblum joined the faculty of Georgetown University Law Center in 1991 and established the Federal Legislation Clinic in 1993. Professor Feldblum founded, and is the Co-Director of Workplace Flexibility 2010, a research, education, and consensus-based initiative funded by the Alfred P. Sloan Foundation to address workplace flexibility policy. Together with Co-Director Katie Corrigan, Professor Feldblum oversees the legal, research, communications, and outreach work of the Initiative.



Katie Corrigan

Bio: Katie Corrigan is the Co-Director of Workplace Flexibility 2010, a policy initiative at Georgetown University Law Center. She and her Co-Director, Chai Feldblum, are responsible for overseeing the strategy, legislative lawyering, policy research, media, and constituent outreach components of the effort. Corrigan began working with Workplace Flexibility 2010 as a Visiting Professor in Georgetown University Law Center's Federal Legislation Clinic, where she worked with students and graduate fellows to provide quality legislative lawyering services to the Clinic's nonprofit clients.

An Interview with Chai Feldblum and Katie Corrigan

by Judi Casey and Karen Corday

Casey: Perhaps you could begin by telling us about Workplace Flexibility 2010.

Feldblum: Workplace Flexibility 2010 is an intentional intervention in the political process in Washington, DC, intended to create a space for research, analysis, and, ultimately, consensus building among a range of constituency groups. The groups include employers, employees, and those who care about specific issues such as disability, aging, health, the environment. We try to envision and move forward a different way of operating workplaces that takes into account the real-life needs of employees and the reality-based business needs of employers. We use objective research and analysis, as well as conversation, to come up with public policy ideas that will help create this type of workplace.

Casey: You just released your report, [Public Policy Platform on Flexible Work Arrangements](#). Can you give us an overview of what you've done to get to this point?

Corrigan: Our platform is the culmination of a 5-year process. It reflects years of research into law, policy, and data as well as the hard work of our staff, our consultants, lots of folks in the Sloan Network, and lots of Georgetown law students who've worked with us over the years. It's unique in that we've spent 5 years not only researching and writing but really listening to a whole lot of people, across communities, across political perspectives, and across disciplines. We took all of that feedback, advice, and counsel and absorbed it in our teachings, and what you see reflected in the pages of the platform is the result of all those conversations. Some of the stakeholder groups we talked to included disability groups, aging and older-worker communities, health-care organizations, military families, Republicans, Democrats, economists, lawyers, unions, businesses, and faith-based groups.

Feldblum: How we work affects how we live affects the entire structure. We were able to provide a forum in which different strongly held realities and views of how workplaces should be set up were able to come

together. We were then able to absorb it, mull it, marinate it, and send it out again for further response.

Corrigan: Because we are an Alfred P. Sloan Foundation grantee, we walked into the project standing on a baseline of years and years of research and thinking about business practice. We built the public policy conversation on a strong foundation of knowledge and communities that had been developed over the last 20 years in the world of work-family on both the employee side and the business side. Because of those relationships with other Sloan grantees and friends, we had access to a lot of different people from the get-go. We actually got outside of Washington, DC, and talked to small, medium, and large employers around the country, state governments, nonprofits, and employee groups and unions. So, we are a Washington-based policy initiative that did get outside the Beltway and listened to the struggles of real people, both employers and employees.

Casey: And were those the community forums?

Corrigan: Yes. We did six community forums around the country. They differed geographically and in terms of audience and focus because we linked the discussion to what the particular community was interested in, whether that was around poverty reduction and the relationship to flexibility or business and economic development in relation to flexibility. So, we did it in different ways, but at each one, we posed the question, how can public policies help make workplace flexibility the normal way of doing business? Depending on which stakeholder we were talking to, there were a huge range of opinions and interesting insights.

Feldblum: I just wanted to comment to really underscore the synergy that happened between us and the other work the Sloan Foundation had funded. On the community policy forums, Patricia Kempton from the Twiga Foundation was our subcontractor, and so we were able to bring her perspective from having worked on this for over 20 years. There was an incredibly helpful connection with other Sloan grantees.

Casey: I noticed that you have remained neutral rather than take an advocacy approach throughout this process. Why did you take that stance?

Feldblum: This was a core component of our approach. As I noted, we were created as an intervention in the political process. After taking an officer's grant from the Sloan Foundation, I felt that the only way to create a space in which an organization could both do objective research and analysis and be a facilitator of thoughtful conversation across what have been often deep ideological divides was to maintain a position of disciplined neutrality. Individual people within Workplace 2010 had ideas about what a public policy approach should be. In fact, we had several strongly held ideas that, when we tested them out with folks, turned out not to be such great ideas. So, by creating for ourselves this standard of disciplined neutrality, we were able to critique our own ideas and other ideas in a fair and reasonable way. We have often described it, internally, as a luxury that we were given; it is not the usual way in Washington. We were an odd duck, but I will tell you, we became a respected duck by the end of the 5 years. I think this policy platform reflects the fact that we maintained neutrality and really listened to different points of view.

Casey: Are you maintaining that stance at this point, or have you switched to being less of a consensus builder to be more of an advocate?

Feldblum: What we've done is switched roles with regard to one of the buckets of workplace flexibility, which is the flexible work arrangements bucket. Our sense of the process is that within another 6 months, we may be able to have a similar policy platform on career maintenance and re-entry, in which case, we will switch. We believe we need the final 2 years of the grant to see if we can achieve a similar role or at least some added contribution to the public policy field of time off.

Casey: It sounds like that is more of a calculated strategy—that you maintain your neutrality until you have your platform, and once you have your platform, you switch roles and become more of an advocate on a particular issue.

Feldblum: An advocate simply means that one has a position on a public policy idea. So, we now believe that these public policy ideas are good ones. Now, on the flexible work arrangements, we are hoping to energize and engage a number of the constituency groups that we talked to in developing this platform to now come together and start seeing these ideas as their ideas. We are still going to play a facilitating and convening role to move these ideas forward.

Casey: There is considerable research indicating that flexible work arrangements significantly benefit both employees and employers. With all this data, why do we need a national platform?

Corrigan: First, I want to underscore that the research tells a very important and compelling story—what has often been thought of as a personal problem of either one family or one business has gone to a broader demographic and social shift over the last 30 years. Those major society shifts absolutely require a structural response from both the public and private sectors. The research exposes the cracks in the system, and now the national campaign is about how we resolve these issues. To date, there has been a lot of positive activity, both inside the employer community in terms of best practices as well as some conversations in the public policy world, but the structural response has not reached the necessary tipping point to really make the change that’s needed. We need a national campaign on these issues that involves the government, policy makers, and the private sector in order to reach that tipping point. Lots and lots of people still don’t have access to all types of flexibilities; it’s not the normal way of doing business in America right now, and because of that, there is a lot of mismatch between the structure of work and the needs of the workforce. We need a national campaign to tell the story of the research and amplify it so people really understand the problem and, therefore, understand why this is such a big deal that needs attention in deep, meaningful ways from the major institutions in our society.

Casey: What are the components of your plan to make flexible work arrangements the “new normal” in the American workplace?

Feldblum: The policy platform is a five-pronged strategic plan for using public policy to make workplace flexibility the standard in the American workplace. The goal of the Sloan national initiative on workplace flexibility is to make workplace flexibility the standard—the ordinary way of doing business. A very compelling moment at the corporate conference happened when the last person on the panel told her story. She was working at Johnson & Johnson, and her mother had gotten breast cancer. She wanted to go to Florida for 4–5 weeks and work from there while her mother was receiving chemotherapy. She had been at Johnson & Johnson for some period of time, but this hadn’t been done before by another employee. She went to the manager and the manager says they can work it out, and they did. A few years later, her mother has a relapse and she has to go back again. At this point she has a new manager who had no clue how she works. She was scared; she finally gets up the courage to ask for flexibility, and he says yes. So, that was the story, and it was designed to indicate the excellent practices of Johnson & Johnson and how these practices were good for her *and* the company. Katie and I listened to this story, and while we were very moved by the story and very glad it had a positive outcome, as public policy people, we see it as exposing the cracks in the system. Why are we living in a society in which you have to worry about going to your manager and asking for this type of arrangement? Why are we living in a society in which it’s not presumed from the onset that there will be such types of situations and, therefore, embedded into the sinews of the company, every single company, is the understanding of how to do flexible work arrangements? Keep this in mind when considering the components:

(1). You’ve got to make the case that it makes sense to have flexible work arrangements. For a lot of companies, they’ve already understood the case; they’re already a company like Johnson & Johnson. However, there are literally millions of supervisors and managers and CEOs out there who have not heard this data, and there’s only a limited amount one university in Boston, an institute in New York, and Corporate Voices in DC can do. This is a societal problem that requires a societal response, which means the federal government needs to put its muscle behind making the case. That’s prong one: Make the case that it makes sense to have flexible work arrangements embedded in your workplace.

(2). It’s not always easy to implement flexible work arrangements effectively; businesses are of different kinds, employees have different jobs, there are different needs. One size does not fit all in this arena; we know that. The second prong of the campaign is to, again, use the muscle of the federal government to provide information, training, technical assistance, and implementation tools. It’s also important to clarify perceived legal obstacles. The default approach of many general counsels for employers is to say, “You can’t do this, there might be a problem with the law.” It’s the natural, cautious reaction. We have heard over the years that the Fair Labor Standards Act might restrict flexible work arrangements for nonexempt workers and hourly workers. What we have done with this is note that there are lots of flexible work arrangements that absolutely have no legal difficulty under the FLSA, and that the Department of Labor should clarify that. There are some actual, legal obstacles, and that’s another aspect of the second prong. If you want to do a biweekly compressed workweek under the FLSA, we think the Department of Labor should look at that possibility. There are some actual tax and ERISA issues for phased retirement; we think that you need three different agencies working together looking at that. The second prong is to provide employers and employees the tools to develop and then sustain effective flexible work arrangements once they have heard the case and decided that they want to implement them in their workplace.

(3). The third prong is to invest in innovation. We know so much because of the work that has been done, but there are new ideas that are coming out all the time in terms of trying to figure out additional ways of doing flexible work arrangements. At the same time the government is putting out information that we already know, the government should also be investing in new ideas. We have in this prong a range of different ideas. For example, some other countries have a legal right to request a flexible work arrangement or legal right to request and actually receive flexible work arrangements for care giving needs. We think we should try that out inside the federal government, but if there was a private business or a nonprofit that wanted to try it out, we think that could be a pilot project as well. Low-wage hourly workers have the same needs for flexibility that we have been talking about this whole time as well as some additional unique needs; sometimes they need more predictability and less flexibility. We have an idea of using federal contractors that employ low-wage hourly workers to think about creative ways of doing scheduling in ways that provide flexibility.

These are not sequential steps. These are all steps that are operating at the same time.

(4). The fourth prong, another step that should be operating at the same time, is to create a flexible Fed—lead by example. When we went out on these 6 community policy forums, when we asked, “How can the federal government be helpful?” at least one person in each policy forum said, “Well, it would be good to see them being this best employer. It would be good to see them having flexible work arrangements embedded in the sinews of their operation.” The Fed is an incredibly varied employer—it has all types of different jobs and is like an industry with 500 different components. We think it’s a really useful space for experimentation. Finally, it’s a potential bully pulpit. We are blessed to have someone who is both a visionary and an effective manager now at the head of OPS in John Barry. Christine Griffin, currently the acting vice chair of the EEOC and a woman who has been very active in the disability world for many years, is also a visionary. There is an opportunity for prong four to actually take off.

(5). The last prong is having an infrastructure to make sure that prongs one through four actually happen. This is not a small project that we are proposing; this is a huge, audacious endeavor. We need a really solid infrastructure that combines the public- and private- sector players that will need to be engaged to make this platform work.

Casey: Why did you involve a National Advisory Commission, and what’s been their role in this process?

Corrigan: I think, like a lot of advisory commissions, the primary goal was to provide us with sound feedback and guidance as we developed the set of policy proposals looking at all three buckets of workplace flexibility. In addition, we were hoping that the mass would be able to come to consensus on some or all of Workplace 2010’s draft proposal. That’s the formal answer. The informal answer is that the National Advisory Commission really forced us to do our homework every month. When you bring 25 smart, talented people from across disciplines to a table, they force you to answer the tough questions. We provided them with detailed memos and fact sheets to frame the discussion. At every meeting, they raised hard questions that forced us to go back and revise those memos and answer even tougher questions with more facts and more data or home in on a specific issue that we hadn’t thought about before. They provided accountability to that 5 year process and really gave the process integrity. You may not always agree with our answers, but we certainly took some of the tougher issues head on and came up with some creative ideas and answered lots and lots of questions.

Casey: What about the economic crisis? We’ve been hearing a lot about people being afraid to ask for flexibility because they’re afraid to lose their jobs. What do you think will be the impact of this global crisis?

Feldblum: We see the global economic crisis as an incredible opportunity for moving forward this plan. The research has always shown that lots of people are afraid to take advantage of flexible work arrangements that exist; that happened before they were afraid of losing their jobs. Obviously, that fear will simply be exacerbated at this time. We’ve also heard the flip side of this; Juliet Bourke from Australia has done a fair amount of writing and research on this, since you have companies who are trying not to lose people completely, so they themselves are trying to play with different types of reduced hours. We don’t consider these flexible work arrangements because we consider that it has to be voluntary, and these are not voluntary; these are ways to save money. But at least, once they get used to seeing this is possible, that might help them integrate flexibility into their workplace. On the limited, micro scale, the global economic crisis can both exacerbate pre-existing problems and provide some opportunities.

However, that’s not the level at which Workplace 2010 is operating. What we’re operating at is an intervention in the political system to generate bold, audacious ideas in public policy. On that level, the global economic crisis is, in fact, the opportunity to remake the economic system into one that doesn’t

carry over some of the mismatch of the old economic system. We are in a moment in time now where our President is talking about building new foundations in how we deal with the environment, how we deal with health care, and how we deal with energy costs. What this platform offers is a way of ensuring that we are also building a new foundation for the workplace. From our perspective, it's a mistake to focus just on the micro effects of the economic crisis. On the macro level, it offers us an opportunity, if we step in and take advantage of that opportunity.

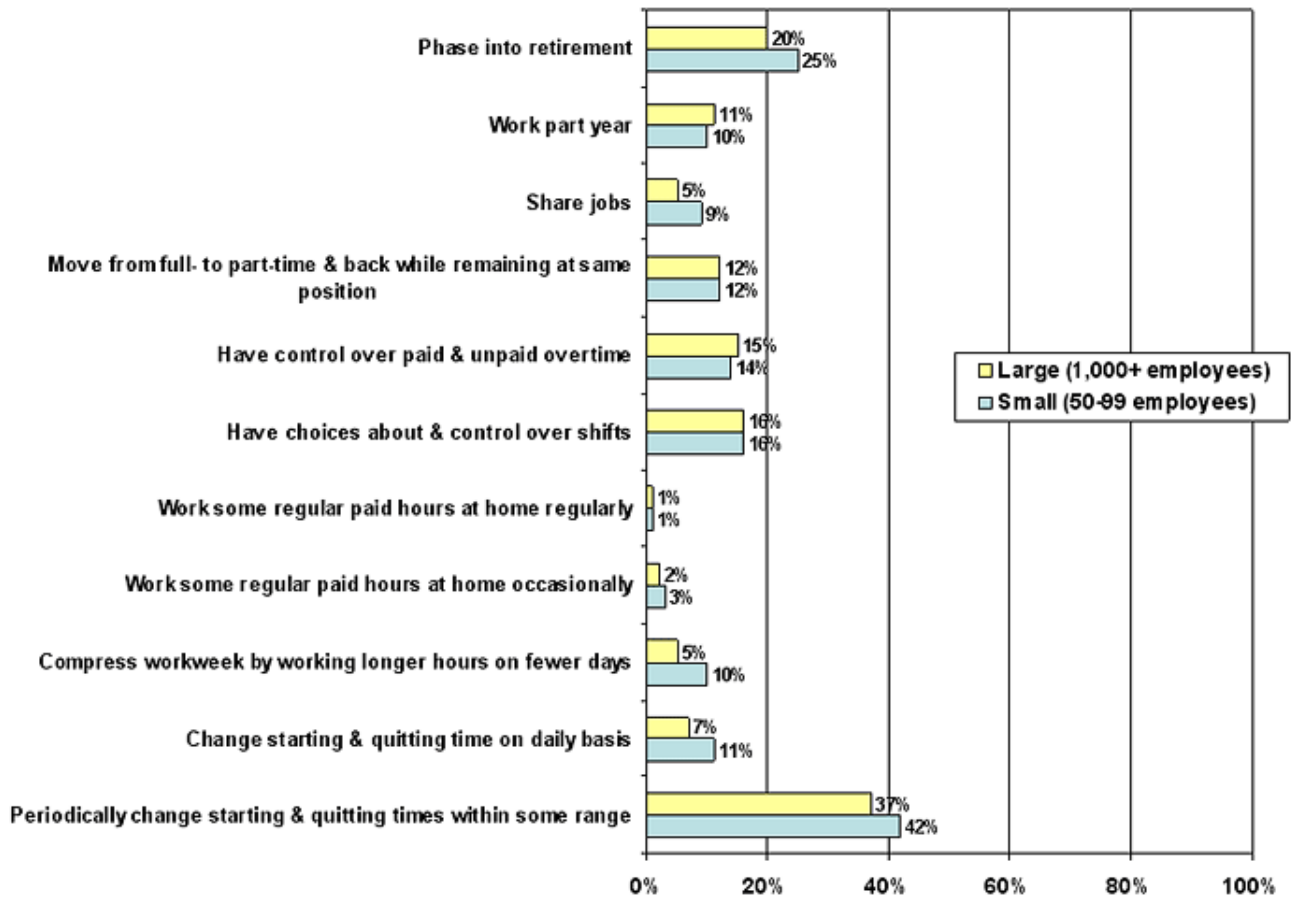
Casey: How can our audience of academics, workplace practitioners, and state public policy makers support your efforts?

Corrigan: You can keep the drumbeat going, and keep saying over and over from whatever discipline they come from—whether that's research, business practice, or public policy—that, based on everything we know through the data and from what we hear from employers and employees, that workplace flexibility is a better way of doing work. It is simply a better way, but to reach that tipping point where it becomes the normal way of doing work, you need to keep the private sector engaged and pushing on this, and you need the public sector to take this seriously as a major public policy issue. When I think about this issue, one of the hard parts of it is that it's kind of mundane; this is about the daily struggle of people's daily lives. It's about getting to work on time when you have major care giving responsibilities. It's about your retirement security and realizing that you might have to keep working as you age. It's all of these personal decisions, but as we now know from the research, the overall impact is anything but mundane. We're talking about big public policy issues here. We're talking about labor force attachment for people with disabilities, women, and low-wage workers. We're talking about aging and retirement security. We're talking about family income. We're talking about the environmental benefits of telecommuting. We're talking about local economic development and making communities work for business and for families. As the administration moves forward to build a new foundation for our economy, it would be a huge mistake not to embed the reality of the way that work needs to be done in a way that works for families and business. It's really making sure that this is no longer thought of as the mundane day to day, but rather to add it all up and see what a big deal this really is.

Feldblum: And I would offer three concrete steps: (1) go to the Workplace 2010 website, download the report or print it out, and even read it; (2) anytime someone mentions the current economic crisis and how that means we have to hunker down and not try to do things differently, they should respond and say, no, this is exactly when we ensure that the new economic system doesn't carry over the mismatch of the old economic system; and (3) if they ever have an opportunity to connect with any policy maker, they should send them to step one.

Casey: Marching orders have been received from Chai!

Types of Available Flexible Work Arrangements By Size of Employer



Source: Workplace Flexibility 2010. (2008). *A summary of data from Family and Work Institute's National Study of Employers (2008): Providing an overview of access to flexible work arrangements offered by employers of different sizes.* Retrieved from <http://www.law.georgetown.edu/workplaceflexibility2010/definition/documents/SummaryofDatafromFWIStudyofEmployers.pdf>

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