

# Rising Impact: How Corporate Counsels Are Affecting Law Firm Compensation

By Hope Viner Samborn

Corporate counsels' desires for lower fees and more value are beginning to drive the way and amount law firms pay associates and even partners, but experts say it is too soon to tell how much of an impact or how long this incremental change may continue.

No one, however, seems to believe that billable hours—part of the fabric of law firms for decades—will become a relic anytime soon.

Yet, many corporations, such as Wal-Mart Stores, Inc. (Walmart), are no longer allowing firms to pass along annual rate increases for lawyers or paralegals. For Walmart, outside legal counsel must justify rate increases. "We have standards that are objective and some that are subjective," says Joe West, associate general counsel for outside counsel management.

Walmart considers whether a firm adhered to the corporation's cost-effectiveness, performance, and diversity goals. West asks firms what types of matters the lawyer handled and the results achieved. "We expect them to tell us why [a rate increase] is merited," West says.

## Cost-Benefit Analysis

As a result of corporate counsel demands, partners will no longer be earning huge draws, according to Susan Hackett, senior vice president and general counsel of the Association of Corporate Counsel, based in Washington, D.C. "That is part of the bygone era," she says.

However, corporate counsels are loath to be directly involved in the intricacies of law firm partner and associate compensation.

"I don't think that a lot of clients want to be involved

in the sausage making of what people should be paid," Hackett says. They do, however, want competent people to stay with firms and handle their work; therefore, firms may be inclined to pay to retain top talent.

"Pay motivates people," Hackett says. "That is how we know someone loves us. We don't get to give our lawyers a kiss on the head. We send them a check."

A good general counsel will look at whether the firms have a rational compensation system that will incent quality work at a good price, according to Joel Henning of Joel Henning & Associates, a Chicago-based legal consulting firm.

Many corporate counsels also are specifying the level of skill the outside legal counsel must have to handle their matters.

A key change is the overwhelming refusal of corporate counsels to pay to train junior law firm associates—a 25-year practice, according to Peter Zeughauser of the Zeughauser Group, a legal consulting firm based in Newport Beach, California.

In the past, law firms sent teams of lawyers to staff matters. Corporations are now saying "don't send three or four attorneys just for their own developmental purposes," says Veta T. Richardson, executive director of the Minority Corporate Counsel Association (MCCA), based in Washington, D.C.

General counsels want lawyers to consult with each other when necessary, according to Marianna G. Dyson, chair of the Washington, D.C.-based Miller & Chevalier executive committee, but "they don't want it to look like a rugby match."

"We have a big say in who staffs our matters, and that is not new," says Rich Baer, general counsel and chief

administrative officer of Qwest Communications International, Inc., headquartered in Denver.

Qwest wants lawyers to be efficient and effective in delivering legal services even if it means that a nonlawyer, paralegal, or technology should be used instead of a lawyer to handle a task.

“The focus should not just be on rate,” Baer says. Clients and firms should determine what work is really necessary for a client’s desired result.

“Lawyers are being taught to be as thorough as possible,” Baer says, but cost-benefit analysis should be used to determine what work is really necessary to complete a matter as well as which person is the right individual to handle the job.

### Effect on Women and Minorities

Some experts believe this belt tightening and push for efficiency may benefit women, men and women of color, and lawyers with disabilities, while others believe it may have a disparate impact.

“It is an especially difficult environment for them to get a seat at the table,” MCCA’s Richardson says. These individuals have “less access to high-quality work and less feedback” in this economic environment. “Diverse attorneys have to be more proactive” in seeking work and training opportunities, feedback, and mentors, she explains.

And with law firms trying to protect their bottom lines, part-time lawyers, both men and women, are vulnerable, Dyson says. Because overhead is the same for both full-time and part-time employees, some firms are eliminating part-time arrangements, she adds.

But other firms may be more willing to offer these arrangements to retain top talent. “The economic duress on law firms has made them more open to alternative arrangements,” legal consultant Zeughouser says. And skilled part-time lawyers may be in demand.

Skilled women, who often are snubbed by the “old boys’ club” network at many firms, may find corporate counsels want them to do their work rather than the less-skilled old boys’ club member, Zeughouser says.

### The Right Lawyer for the Job

Corporate counsels and outside lawyers need to have candid conversations about budgets, what is necessary to handle a matter, and who are the most appropriate individuals to handle specific tasks, says Dyson, who has a specialty tax practice. They need to clearly detail their expectations and what legal services they are willing to buy, and law firms need to be clear about what they can deliver and what they are willing to offer, Dyson adds.

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In some cases, general counsels told her firm that newer associates could not work on some matters without their prior approval. This directive resulted in more work for experienced lawyers despite their higher billing rates. In many cases, these more experienced lawyers did the work quicker than young associates, incurring a few hours of billable time rather than three to four times that amount, Dyson explains.

However, some tasks should be done by less-experienced associates, Dyson says. She adds that a very good second- or third-year associate is often far better at navigating Lexis or other online research tools than more senior members of a firm, so the newer lawyer would be more efficient.

Billing partners also are being forced to spread their wealth as corporate counsels demand that they delegate matters to other partners and associates who may be better suited to handle the particular client matter.

“You want to reward people for delegating work and supervising work rather than doing work. It is how many other people have you kept busy with your work,” Henning

explains. “You should ding them for simply hoarding the work.”

### Linking Pay with Skills

“I am in favor of the transition from lockstep to merit-based compensation,” says Deborah Epstein Henry, founder and president of Flex-Time Lawyers, LLC. Henry heads a national consulting firm that focuses on work/life balance issues, the retention and promotion of women, and new models of legal practice. “The notion of lawyers being recognized for contribution and quality of work rather than seniority makes a lot of sense,” she says.

According to Henry, part-time lawyers, women, and people of color must be provided access to “influential partners and exciting assignments” because using a merit-based compensation system to evaluate lawyers is highly subjective. “There should be checks in place to ensure that biases are not brought into evaluations that are particularly unfair to women and people of color,” she adds.

Although wholesale changes in law firm compensation for associates and partners are rare, one firm—Howrey LLP—overhauled its compensation structure. More than two years ago, the firm announced that it would pay associates based solely on merit rather than longevity. Eliminating the lockstep approach to compensation—a change made earlier this year as planned—was driven largely by corporate clients, says Robert Ruyak, Howrey managing partner and CEO in Washington, D.C.

Corporate clients wanted to pay fees based on lawyer skills rather than their longevity with the firm. “If I put someone on a big case and they are doing the same things, clients would ask, ‘why I am paying more every year for the same work?’” Ruyak says.

To address this concern and continue to challenge and develop its lawyers, Howrey established a tiered compensation system based on skill competency determined by objective and subjective lawyer evaluations. Associates undergo two annual assessments of their skills, training, and capabilities.

Within each tier, a specific skill set is

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expected. It may not correspond to the number of years in practice. "Everyone assumes just because you are out of law school a year longer, you are better," Ruyak says. "That is not really true."

Clients like this new skill-based system because it ensures that the lawyers working on their matters have defined skill sets, Ruyak says.

The firm's billable-hour requirement, however, remains because it enables Howrey to determine who is fully committed, Ruyak says. If someone wants to work fewer billable hours and has reached a skill level tier, they will be compensated on a percentage basis. For example, if an individual completes 70 percent of the billable-hour

requirement because he or she chooses to take care of an elderly parent or if an individual has a disability and he or she has achieved a certain skill level, the person will receive 70 percent of the compensation for that tier, Ruyak says.

With the lockstep approach, part-time lawyers were not believed to be as competent as full-time lawyers. "That wasn't true," Ruyak says. "This system gives you maximum flexibility. You can recognize actual skill levels and people are not penalized for fewer hours."

Deborah Epstein Henry agrees. "In the long run, [reduced-hour lawyers] can benefit from a merit-based system, where efficiency is part of the evaluation."

Some firms are agreeing to alternative fee arrangements—such as where the corporation pays a reduced hourly billing rate and the law firm receives a bonus if it achieves certain objectives—and others are establishing fees that reward efficiency. The result, experts say, is that skilled, efficient attorneys, including women, people of color, and those with disabilities, will benefit.

The key for corporate clients in these difficult economic times, according to Zeughauer, is "that you get the best person at the best value." 

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