



A Newsletter for Members of New York Flex-Time Lawyers LLC 2007 – 2008 Season

Creative Ways for Law Firms to Survive the Economic Downturn

By Deborah Epstein Henry



Introduction

For many law firms, the knee-jerk response to the recession is to clamp down on costs by cutting staff. Instead, we should be thinking of creative ways to maximize productivity without layoffs. This notion is gaining acceptance in the legal profession¹ and beyond. In a December 2008 *New York Times* front page article, the article reports “[a] growing number of employers, hoping to avoid or limit layoffs, are introducing four-day workweeks, unpaid vacations and voluntary or enforced furloughs, along with wage freezes, pension cuts and flexible work schedules. These employers are still cutting labor costs, but hanging onto the labor.”²

¹ Gina Passarella, “Work-Life Balance Scale Tipping in Work’s Favor,” *The Legal Intelligencer* (Nov. 3, 2008), <http://www.flextimelawyers.com/news/news55.pdf>.

² Matt Richtel, “More Companies Cut Labor Costs Without Layoffs,” *The New York Times* (Dec. 22, 2008).

Using Reduced Hours and Alternative Scheduling to Avoid Layoffs

Firms that have issued layoffs in the past have suffered the consequences for years. These firms’ representatives have reported reluctant law students asking whether the firm is stable more than five years after the layoffs. When lawyers leave, employers lose institutional knowledge and suffer severance, outplacement, and long term recruiting and replacement costs. For remaining employees, morale and productivity decline. Firms should avoid or minimize layoffs and find a better way to manage during the economic slow down.

For example, firms can offer broad based reduced hours³ to their lawyers with commensurate reductions in pay. This will result in innumerable benefits. It enables a firm to retain its valuable talent while paying them less so that expenses are reduced. It assures clients continuity of service and avoids delays that result when new attorneys join a client team. When clients are told they will not have to pay for the learning curve of a new lawyer being staffed on

³ The term “reduced hours” is used here to refer to law firm lawyers who work a reduced workload of full-time lawyers. Reduced hour law firm lawyers typically work 60 to 80 percent of the required billable hours of a full-time law firm lawyer. The term “part time” has historically been used to refer to reduced hours, but it is a misnomer, because many reduced hour lawyers work 40 hours a week or more.

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their matters, they are not convinced. They also get frustrated by the need to develop new relationships and the lost institutional knowledge. Having more lawyers work reduced hours provides benefits later. When the economy picks up again, a firm avoids the additional expenses and uncertainty of recruiting new talent that may not be a good match for the firm. Additionally, when the market improves, firms are likely to be more cautious and reluctant to give generous bonuses as a means to entice lawyers. In turn, firm culture will become more important for firms to distinguish themselves and retain talent. Also, a firm's decision to offer reduced hour options to avoid layoffs will engender loyalty among lawyers. The decision to retain lawyers at reduced hours and lower pay will not only impact the lawyers who use these options. It will also improve the morale of the whole firm by minimizing the burnout and lack of productivity that ensues among employees who remain after layoffs.

Another benefit to offering reduced hours is to address an intractable problem. Firms have resisted the economic benefits of reduced hours and in an economic downturn, the benefits are even more apparent. Having lawyers work reduced hours with commensurate reductions in pay provides an economic cushion to the firm because firms do not pay for extra hours not billed. These reduced hours lawyers will likely be more productive because they will have more time to attend to personal issues outside the office. Additionally, by not only offering but encouraging reduced hours, firms can minimize the stigma lawyers feel in making the switch to reduced hours. With the economic benefits of reduced hours more clear than ever, firms can seize the opportunity to introduce

reduced hours and improve how lawyers working reduced hours are treated.⁴ In addition to reducing hours, firms can cut other costs to avoid layoffs, including: freezing hiring; delaying raises or cutting salaries; eliminating bonuses; redeploying employees to busier departments; offering early retirement packages; cutting temporary staff; and, reducing spending on marketing and travel.⁵ Firms can also encourage unpaid sabbaticals and, for lawyers and staff, offer more telecommuting to save on energy costs.

If firms decide to use reduced hours as a partial solution to the economic downturn, they need to educate their lawyers about the firms' existing reduced hour policy. In doing so, firms should hold a firm meeting where management presents the opportunity for lawyers to work reduced hours in exchange for less pay and circulate and explain the firm's policy. It is important to be upfront with the lawyers that this may be only on a temporary basis, depending on the demands of the market, but it is being offered as a solution to manage the reduced amount of work. Management should also disclose the ideal percentage of reduced hour lawyers it is looking for and if the need is greater in certain departments than others. Management should then

⁴ See Deborah Epstein Henry, "Facing the FACTS: Introducing Work/Life Choices for All Firm Lawyers Within the Billable Hour Model," *Diversity & the Bar* (Nov./Dec. 2007), <http://www.flextimelawyers.com/pdf/art10.pdf> (When all lawyers are under the same system or more lawyers opt-in to alternative scheduling, stigma can be reduced).

⁵ Cari Tuna, "Some Firms Cut Costs Without Resorting to Layoffs" *The Wall Street Journal* (Dec. 15, 2008).

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invite lawyers to submit proposals indicating the proposed percentage of the firm's target billable hours that the lawyer would like to bill and how the lawyer plans to achieve those hours without negatively impacting colleagues and clients. By inviting lawyers to volunteer to work less, it should reduce the fear that many feel that asking for flexibility will make them seem less committed and will jeopardize their job. Lawyers who opt for reduced hours should then receive training on the "nitty gritty" of how to make reduced hours work to ensure the success of the new arrangement.⁶ Such training should include guidelines for technology and how to ensure that work continues to flow when lawyers are out of the office and that colleagues and clients are not negatively impacted.

Re-engineering Talent & Filling Gaps

In an economic downturn, there are inevitably lawyers in certain departments who are no longer busy. Corporate America has been more successful in redistributing talent as a means to keep valuable employees -- and law firms need to improve this effort. If certain lawyers are talented, it is better to invest in training them to become generalists or develop new areas of expertise than let them go. These lawyers can be asked to develop in new practice areas or help with spillover work in the busier departments. If some layoffs have already been implemented at your firm, the remaining lawyers who are not as busy can start developing the expertise to fill the talent gaps that the departing attorneys have

⁶ See Deborah Epstein Henry, "The Nitty-Gritty of How and Why to Make Part-Time Work," *The Balance Beam* (2003 – 2004), http://www.flextimelawyers.com/pdf/2003_2004newsletter.pdf.

left behind. It is important that management effectively supervise the remaining lawyers to minimize burnout, anxiety and low morale.

Another source for filling expertise gaps are "re-entry" lawyers – typically lawyers who have left the profession for one or more years, primarily for child-rearing purposes, and are seeking to return. There has been growing awareness of the value of recruiting back re-entry talent for several years.⁷ When layoffs have taken place, re-entry lawyers can take deliberate steps and become a valuable resource to fill in for niche practice areas that are lost.⁸ Employers can minimize their risk in hiring re-entry lawyers by hiring their own former lawyers. However, if these lawyers are not available, employers can also minimize risk by hiring first on a temporary and hourly basis. These re-entry lawyers are not coming from a prior job so there are fewer issues about matching prior salaries and hours. Instead, re-entry lawyers can be tapped to perform spillover work, fill in expertise gaps and minimize burnout for lawyers who have remained. If re-entry lawyers start on a temporary basis and are paid hourly, there are no additional costs if the work disappears. At the same time, they can be groomed to be future employees when the economy improves. If existing talent is redistributed to new departments or re-entry lawyers are recruited back as employees, it is critical that these

⁷ Leigh Jones, "A Promising Talent Pool: Alumni," *National Law Journal*, Oct. 16, 2006.

⁸ Deborah Epstein Henry, "Getting Back: The Path for Lawyers to Return to Practice," *National Association of Women Lawyers Journal* (Spring 2007), <http://www.flextimelawyers.com/pdf/art8.pdf>.

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lawyers are trained to ensure a smooth transition into a fragmented workforce.⁹

Telecommuting & Re-Thinking Office Space

Another significant cost saving opportunity is office space. As Darragh Davis, Vice President and General Counsel of PETCO Law Department put it, “re-thinking office space is just the logical extension of business casual.” I recently spoke with the Chief Executive Officer of Greenberg Traurig, LLP, Cesar Alvarez, and he shared some valuable insights. Law firm offices were built for Baby Boomers, with large corner offices and nice artwork to impress clients. But those clients seldom visit their lawyers, except for closings and large meetings and those are held in conference centers at the office. Generation Y is not generally interested in big corner offices – in fact, it may deter rather than impress them. In turn, Greenberg’s new Miami office will be built differently than prior offices. The office will be smaller -- 125,000 square feet, rather than 185,000 – but it will be designed for more lawyers. Less space is needed for several reasons. Younger lawyers are interested in more communal work spaces, not big corner offices. Also, telecommuting is on the rise and more lawyers will be out of the office regularly. Greenberg is attuned to the importance of going green. It is noticing that its lawyers are enjoying shorter commutes and going to their clients’ offices and not to the main office everyday. Indeed, usage of offices like its Westchester, New York office, near

⁹ Deborah Epstein Henry, “Comeback Lawyers: A Look at Why Re-Entry is a Hot Work/Life Balance Topic,” *Diversity & the Bar* (Jan./Feb. 2007), <http://www.fleximelawyers.com/pdf/art11.pdf>.

major and expensive metropolitan centers, is increasing and lawyers are saving time and money and reducing their carbon footprint by not commuting to Manhattan every day.

In short, the increased desire and ability to work offsite and in communal work spaces combined with the interests in saving costs, time and being green mandate firms to reconsider large, traditional offices when they renew their leases and redesign new office spaces. The additional benefit is that Greenberg expects to be more cost-efficient in the delivery of services to clients, something that clients welcome in today's economic environment.

Deborah Epstein Henry is Founder and President of Flex-Time Lawyers LLC, a national consulting firm advising law firms, corporations, lawyers and law students on work/life balance and the retention and promotion of women attorneys. Flex-Time Lawyers LLC also provides national speaking engagements, recruiting services and hosts a membership organization with chapters and regular programs in New York and Philadelphia. For more information, please visit www.fleximelawyers.com.