

## Ten Reasons Not to *RUSH* to Merit Comp

By Susan G. Manch

If you are reading the legal press these days (and frankly, who isn't?), you are likely to hear pundits opine that law firms must switch to merit-based compensation in order to maintain profitability. If we were back in the boom times—the days of firm concierges and summer booze cruises—these would be fighting words. Before the massive layoffs that accompanied the arrival of 2009, the sacrosanct nature of lockstep associate pay was such that a firm's public support for even the *idea* of applying objective standards to associate compensation would ruin their recruiting chances on any top law school campus, and would indeed have earned them the dreaded “TTT” moniker on the blogs (third-tier toilet, for non-bloggers).

What a difference a year makes. Today the few firms that already employ a merit-based approach tout their foresight publicly, when only a year ago they would have gone to great lengths to describe their pay approach to recruits as “just like lockstep”. Now we hear about transitions to a merit-based approach described as not only inevitable, but as if firms could wave a wand and make it happen overnight.

But of course that is a fantasy. Merit sounds great. Who wouldn't agree that a compensation system designed to give the most to those who are the best and the least to those who are the worst is incrementally more effective? It appears simple on the surface, but the reality is that it is not so simple in execution for most law firms. For example, how does one decide who is “best” and who is “worst”? In a typical law firm evaluation system, a standard set of performance criteria are measured in annual evaluations each year. Partners dutifully (or not) rate associates on, for example, a 5-point scale, rating Tom as a “2” on writing skills and Anne as a “1.5”. This is where the problems begin because each partner has his or her own subjective opinions about what each of these ratings mean, regardless of how much explanation accompanies the evaluation forms. What were the actual, identifiable (and yes, defensible) differences observed in Tom and Anne's writing skills? Associates in different practices and offices, at differing levels of seniority, and with wide variations in experience are rated on the same scale and on the same performance criteria. So with these thoughts in mind, here are the top 10 issues you want to consider before converting:

10) A subjective assessment approach is fine if all associates perform similarly—but of course they do not. Perhaps even this issue could be overcome if performance expectations were clear and feedback on progress was frequent, candid, and specific. If your partners give great and regular feedback, you can stop reading and get started on your move to merit. If not, let's move on to the next consideration.

9) Since associates have no job descriptions, expectations are a bit fuzzy. If feedback from partners is non-existent, progress in meeting even fuzzy expectations remains a mystery for most. Add to these concerns the fact that most partners have the right to evaluate associates anonymously. If you have articulated clear expectations for associate performance and partners take responsibility for the performance assessment they make, you are ready to go. If not, keep reading.

To sum up so far, ineffective evaluations do not make a strong foundation for the introduction of merit-based compensation systems because the essential information gathering tool is absent. The variation in the firm's success in moving to merit can usually be tracked to the effectiveness or ineffectiveness of their evaluation system. Some firms have found the merit approach highly motivates their associates and supports profitability by rewarding those who work harder and produce higher quality work. It allows associates to chart specific performance goals and be rewarded for attaining them. Others deem their experimentation with a merit-based systems as a colossal waste of time—pointing to partners arguing over adding/ subtracting \$5000 from a lawyer's six-figure pay in a dance that recurs each year. The one factor that separates the firms that find real benefit in a merit-based approach from those that don't: whether the firm has put into place a fully integrated, competency-based approach to performance management.

8) Most of the firms that successfully employ a merit-based approach have done the hard work of building an effective basis for describing consistent standards of performance, measuring the extent to which standards are met, and differentiating one associate's performance from that of another. Competency-based are the leading edge in this approach today. If you have a competency model, you are many steps closer to "Go". If not or if your competency model is not fully used or understood by your associates and partners, go to issue 7.

7) The best competency models in law firms are based on core competencies found among the firm's most successful lawyers and are tailored to reflect the appropriate hallmarks of excellence at each level of experience. A first years' and an eighth years' performance is not measured against the exact same standards. In a high functioning competency model, a pathway to excellence is made clear—as mastery of each level's performance standards prepares the associate to meet objectives in the next level and failure to attain mastery requires more time at that level. If you have adapted your competency model to this level of effectiveness and transparency—you are ready to move ahead. If not, keep reading.

6) For an effective transition from lockstep firms must have fully integrated supports create a foundation for associates to be successful. A fully integrated competency-based approach requires that the firm use its core success factors to recruit, integrate, train, evaluate, and advance its associates. If you have taken your competency model to this level, merit compensation will work very well. If not, there is more work to be done.

5) Recognizing and rewarding individual effort enhances motivation by allowing achievement-oriented individuals to understand what the firm values—and expects—by

seeing what is rewarded. Most associates, though seemingly attached to the lockstep approach for obvious reasons, are desperate to know where they stand in the eyes of the partners (perhaps more so today than at any time in history). It can be highly motivating for associates to have a clear outline of well-communicated firm expectations and standards against which to measure their performance. If your reward and promotion process is fully aligned with your success factors (meaning that the people promoted to partner or those who get the top bonuses are clearly performing at mastery level on the majority of your competencies), then you should already be using merit compensation. If some people get rewarded who are not actually truly successful lawyer, as defined by the model, then more work lies ahead.

4) An individual's motivation to achieve is directly related to and affected by both his/her *desire* to succeed and his/her *expectancy* of success. Approaches with clearly delineated core competencies provide a direct reward for success that builds an individual's desire to achieve. Clear expectations and fairly applied standards make associates feel as though they have a better chance for success. If firm leaders have committed to hold all lawyers to the same standards of performance—both partners and non-partners—your system is fully functional. If not, jump ahead.

3) Associates' ability to fully embrace a merit-based approach will be dependent on the level of trust they have in the firm's fairness. Trust has to be earned and requires the discipline to consistently act in ways that are fair and focused on the good of the firm (not on one's self interests). If your practice and office leaders demand that senior lawyers manage, mentor, and train associates effectively and reward them for committing time to those tasks consistently, then merit will work seamlessly. If not, keep going.

2) A successful move to merit requires that administrative support be in place to manage the various elements of the developmental framework that supports it. This means investing in skilled professionals to build and monitor the system. If you have a professional development staff trained and fully funded to manage the system effectively, your move will go smoothly. If you are expecting busy lawyers and leaders to manage the process, keep reading.

1) Finally, a successful move to a fully integrated competency model and then on to merit comp can only be achieved when all firm constituencies have been invited to offer input and ideas. Acceptance of change requires that individuals be invested in its worth—both to them as individuals and to the firm and its strategic objectives. If you have built consensus by sharing information and effectively communicating decisions reached, you are ready to make this significant change. If not, go back to number 10.

Positioned as a “way to save money” or “means to weed out non-performers”, a move to merit comp will forever be viewed as punitive. Positioned as a part of a strategic talent development model designed to attract and retain top-performing lawyers, it has the chance to be viewed as a true benefit. To get the desired outcomes from a move to merit comp, firms must commit to the hard work of earning associates' trust by putting in place

clear expectations and a transparent process for measuring the extent to which they are met. Moving to a merit without establishing this foundation could cost firms far more than they will ever save.

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