

Yale Law Women Blog

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Guest Blogger: Deborah Epstein Henry

We are joined today by Deborah Epstein Henry, founder and president of [Flex-Time Lawyers LLC](#), a national networking and consulting firm advising law students, lawyers, and legal employers on work/life balance and the retention and promotion of women attorneys.

Face the FACTS: Implement a Multiple Target Billable Hours Approach to Address the Economic Downturn

Every day, hoping to keep afloat, law firms are laying off attorneys in response to the economic downturn. Layoffs, however, do not provide the largest cost saving opportunities and they create many negative repercussions. These include: increasing severance and outplacement costs; eroding institutional knowledge; disrupting continuity of service; losing talent; declining productivity; alienating clients and potential future hires; delaying resolution of pending matters; and, increasing long-term recruiting, training and replacement costs.

To respond to the economic downturn and avoid the costs resulting from layoffs, many firms are considering restructuring and dispensing with the billable hour. Billable hour rates and hourly demands are reaching a ceiling while clients are demanding more value and showing less loyalty. The billable hour model creates inconsistent interests between clients and lawyers by penalizing productivity and efficiency. The billable hour also creates temptations to pad hours, hinders associate training, discourages pro bono work, and detracts from collegiality.

But progress in banishing the billable hour may be slow. Many firms are afraid to make dramatic changes during an economic crisis. The billable hour has been entrenched since the 1950s. Billable hours are a simple method that has been profitable to firms, that puts a value on a service which many argue is hard to accurately fix, and that fits within the profession's characteristic risk aversion.

Another response to the economic downturn is to offer reduced hours and other alternative options. These options include: mandating or encouraging reduced hours with commensurate reductions in pay; offering more telecommuting to save on energy costs; encouraging unpaid sabbaticals; offering unpaid vacations; issuing wage and hiring freezes; cutting salaries and bonuses; making pension cuts; offering early retirement packages; cutting temporary staff; reducing spending on marketing and travel; and, redeploying remaining lawyers to busier departments. If firms applied these steps, the savings would be considerable and firms would be more profitable than if they issued layoffs. However, many firms are unwilling or unable to impose these changes on a large-scale basis to respond to the economic challenges facing firms. Some firms argue, for example, that the stigma surrounding reduced hours has kept usage rates low, resulting in fewer savings than necessary.

While the billable hour remains intact and firms are unwilling or unable to use large-scale reduced hours and alternative options to address the economic crisis, FACTS is a necessary alternative methodology for firms to create savings, avoid layoffs and maintain viability. In the FACTS acronym, the key is “T” which stands for Target hours. Under FACTS, the terms “full-time” and “part-time” are eliminated and instead, a firm creates four to six Target billable hour tracks. These different Target tracks are determined by office, department, level of experience and individual performance and they are based on the four to six most popular Target hours that attorneys’ bill. For example, one firm may establish six Target hour tracks of 1200, 1500, 1600, 1700, 1800 and 2000, after identifying that most attorneys’ hours cluster around these six Targets.

Compensation under FACTS is determined by firms setting salaries at the highest Target for each associate class, and then adjusting salaries downward for attorneys in the lower Target tracks. For example, if 2000 is a firm’s highest Target and third year associates billing 2000 are paid \$200,000, a third year associate with a 1500 Target would be paid \$150,000. Individual compensation may be further adjusted to reflect work quality, non-billable contribution and business generation, where appropriate. Lawyers billing lower Target hours (previously called “part-time”), would be eligible for promotion, although it may be delayed. Lawyers’ hours and compensation would be reviewed annually to ensure fairness and make necessary adjustments.

The “F” in FACTS stands for Fixed hours and it provides additional cost saving measures for firms. Lawyers working Fixed hours (called staff or contract attorneys at some firms) exchange high level work and the opportunity for promotion for more control over their hours. Firms with more predictable and less challenging work can assign it to Fixed hour lawyers at a significantly reduced pay rate.

While the “T” in FACTS addresses how many hours are billed and “F” focuses on the type of work, the three other letters in FACTS are about the way work gets done – “A” stands for Annualized hours, “C” stands for “Core” hours, and “S” stands for Shared hours. For more information, 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).

Many firms have already implemented a multiple Target hours approach. In the 2009 Working Mother & Flex-Time Lawyers Best Law Firms for Women national survey, 26 out of 105 applicant firms reported using multiple Target hours. Eleven firms reported two Targets, thirteen firms reported three or more Targets and two firms did not report numbers. The Target tracks that applicant firms used ranged from 1200 to 2200 hours. The FACTS Multiple Target approach is an extension and expansion of what many firms are already doing. Under FACTS, all lawyers would work in four to six different Target ranges – these ranges more accurately reflect the reality of current attorney billing patterns. Each track would have commensurate salary adjustments and firms would not separately categorize reduced hour lawyers – they would simply be on the lower end of a firm’s Target hour tracks.

Under the FACTS Multiple Target approach, while firms would still incur the overhead of lawyers who remain employed but bill less, some of this overhead is unavoidable for firms that remain in their current office space. Firms that are able to redesign new office space could significantly reduce their overhead as explained here, see Deborah Epstein Henry, [“Creative Ways for Law Firms to Survive the Economic Downturn,”](#) *The Balance Beam* (2007-08). For firms that retain their existing overhead, the overhead must be compared to revenue generation to assess a firm’s profitability.

Under the Association of Corporate Counsel (ACC) Value Challenge Law Firm Profitability Model (the "Model"), the savings to law firms by applying a FACTS Multiple Target Hours approach is greater than applying a layoff approach. Firms are encouraged to [input their own numbers into the Model](#) to determine their increased revenue and savings by applying a FACTS Multiple Target approach rather than issuing layoffs.

In addition to the savings gleaned from applying the Model, there are other economic benefits under a FACTS Multiple Target approach that are considerable. Firms would pay proportionately less to most attorneys while avoiding the outplacement and severance costs associated with layoffs. Client frustration and alienation would be minimized by firms providing continuity of service and avoiding loss of institutional knowledge. Firms would also avoid the expenses and uncertainty of recruiting, training and hiring future talent.

Applying a FACTS Multiple Target approach would also address the intractable problem of stigma that has been an impediment to lawyers using reduced hour programs since their inception. Under the FACTS Multiple Target approach, all lawyers would work in one system, within a range of different Target Hours, and the terms "part-time" and "full-time" would be eliminated, thereby diminishing the risk of stigmatizing a small group. Additionally, the FACTS Multiple Target approach would be implemented as a cost saving initiative to preserve the viability of firms. Thus, the lower Target hours would be viewed as an economic imperative rather than an accommodation. In sum, by implementing a FACTS Multiple Target approach, firms will garner the additional cost savings they need to avoid layoffs while retaining the morale and productivity of their lawyers and the sustainability of their firms.

For more information, please visit Flex-Time Lawyers LLC at www.flextimelawyers.com.

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