

The changing legal profession, your opportunity?



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The legal profession is slowly pulling out of its recession, but other market-influencing factors continue to force change. As new client demands, technology efficiencies and evolving workforce demographics reshape the legal landscape, the number of legal employers adjusting their business models will continue to grow well after the economic recovery.

How can you thrive in today's (and tomorrow's) legal landscape? Deborah Epstein Henry, author of a new ABA-published book, [*Law & Reorder: Legal Industry Solutions for Restructure, Retention, Promotion & Work/Life Balance*](#), explains the forces of change and provides advice for successfully navigating the changing legal profession.

There are a number of factors driving change in the legal profession. What are these factors and how do they interplay with each other?

One factor driving significant change is the increased recognition that the billable hour no longer works and that the traditional law firm model is broken. The economic downturn expedited this realization for many. Much of the push has come from clients who are showing less loyalty and demanding more value and predictability in fees.

Another impetus for change comes from the talent pool. Generation Y is more vocal about its desire to work differently, to live a more integrated life and to trade money for time. In addition to Gen Y, Baby Boomers who comprise 70 percent of law firm partners, are seeking to retire differently.

Also, many women who have not had linear career trajectories are communicating their interest in choosing from multiple career paths. Add to this, the disaggregation, commoditization and globalization of work and the increased use of technology to gain efficiencies, and the need for change is clear.

Are there viable new legal models that have evolved? If so, can you give some examples?

Axiom is one successful new model law firm where Axiom lawyers work mostly on a retainer basis at a client site or in a subsidized home office. Clients are charged about half of typical fees or less and the model fills the gap for in-house legal departments that are retaining more work while shrinking their staff.

Variations off the Axiom model that have also been successful are when outside law firms serve as part-time

general counsels for legal departments that don't have the work or the budget to maintain a full-time lawyer.

Additionally, some new model firms are structured to "second" or lend their lawyers to in-house legal departments for periods of time, typically for three months to a year.

Virtual law firms have also gained momentum, where mostly partner-level attorneys charge one-third to one-half of large law firm fees. These lawyers keep up to 85 percent of what they bill, rather than the typical 33 percent rate. Clients benefit from lower rates and new model firms' willingness to be more flexible with alternative fees. There are also blended professional services firms—providing legal and business advice—and alternative hour firms. Legal process outsourcing—the process of sending work offshore to a lower cost jurisdiction—is another growing new model.

What about the traditional law firm model—Can it be revamped and if so, how is it being done?

The traditional law firm model of leveraging three to four associates to every one partner and maintaining lockstep compensation and promotion is and should be revamped. It is being revamped by law firms reducing the number of incoming attorneys, increasing the use of temporary attorneys, shrinking partnership-track associate classes, and using more staff and non-partnership attorneys.

Many firms are also moving from a lockstep promotion and compensation system to a merit-based one, where associates are trained to achieve articulated competencies in order to be promoted, paid more and billed to clients at a higher rate. For these law firm structural changes to work, law firms have to invest and develop their talent pool in a way that they've never done before. A key to all of these changes is to better align the marketplace and law firm and client demands with the strengths and needs of lawyers.

Are alternative fee arrangements the answer?

Alternative fee arrangements for both traditional and new model law firms are a big part of the answer. What's important, though, is that when clients and law firms talk about alternative fees, that they're talking about real alternative fee arrangements.

The most popular among these are fixed fees tied to a success fee or bonus, a retainer or a contingent fee. These alternative fee arrangements create predictability for clients and they reward results and efficiency, rather than hours logged. Also, importantly, they align client and law firm interests and create a sharing of risk.

In contrast, alternative fee variations of the billable hour, like discounts, blended or frozen rates, fee caps, among others, do not promote the benefits of real alternative fee arrangements. They do not promote efficiency and there is a risk that matters will be staffed with lower caliber or less experienced lawyers.

It is important to recognize that alternative fee arrangements are more challenging to implement with complex matters. However, with periodic review, pricing broken down by the stages in a matter, and clients and law firms that have a history of dealing with each other, such arrangements can be successfully achieved.

What is the fallout of all of this industry change?

One significant fallout is the junior lawyer—Where will the junior lawyer get trained? At traditional law firms, the client no longer wants to pay for junior lawyer training and law firms are no longer able to bill for junior lawyer time. Additionally, much of the work that junior law firm lawyers traditionally performed is now being outsourced to a lower cost jurisdiction or it's being disaggregated and billed at much lower rates and at times,

no longer being performed by attorneys.

Some mistakenly believe that only the junior lawyers and the law firms that used to generate revenue from them are the ones negatively impacted by these changes. However, it is a pipeline problem for the whole profession. The traditional law firm will not have the same opportunity to groom its future leaders and the new model law firms and in-house legal departments will no longer have the same ability to pluck well-trained talent from traditional law firms.

Are there other significant challenges that result from the changes in the industry?

The other significant challenge is in determining value and I see this challenge manifested in three different ways.

First is the challenge of determining value of a case or matter. Firms and clients are struggling with alternative fees because neither side wants to incur more than its fair share of risk.

Second is the challenge of determining the value and profitability of a law firm. Firms may move away from profits per equity partner for their determination of value. With all of the changes happening at firms to associates and junior lawyers, inevitably there will need to be more changes with the partnership structure, including how profitability is determined.

And, third is the challenge of determining the value of associates. With the move away from lockstep compensation and promotion, firms are wrestling with how to assess the value of associates' contribution based on a measure other than time.

With all of the changes impacting the profession, should employers still be concerned with designing a work/life friendly environment or are work/life issues now just a luxury?

Some employers mistakenly believe, particularly in the economic downturn, that work/life balance no longer matters. However, there are a number of converging factors that evidence that work/life balance is a growing priority in the workforce. These factors include the fact that the lawyers clamoring for work/life balance have expanded and changed. It is no longer just a stigmatized group of working mothers.

Generation Y is making work/life balance a gender and reason neutral priority, meaning that men and women are prioritizing work/life balance for reasons in addition to parenting. Additionally, some Baby Boomers, who comprise 70 percent of law firm partners, are looking to phase into retirement over five – 10 years working a flexible or reduced schedule.

Along with the growing work/life demands of the talent pool, technology has given lawyers the ability and desire to work differently and the globalization of work has created an expectation of 24/7 flexibility that needs to be mutual. While some employers are still ignoring these talent pool needs, when the talent gap returns in 2018—as experts predict it will—employers will no longer be able to afford to deny them. The key to designing a work/life friendly workplace is to create an environment that is work/life friendly for men and women for reasons in addition to parenting.

Law firms have been resistant to flexible and reduced hour arrangements, but you say such arrangements are profitable. What's the business case for offering flexible and reduced hours?

For employers offering flexible hours under a billable hour model, there is usually no revenue impact. These lawyers continue to be as profitable as full-time lawyers working a traditional schedule. This is because many lawyers seeking flexible hours are not seeking to bill less—they are simply seeking flexibility in where and how

they work. If these lawyers working full-time flexible hours deliver top notch work and they are responsive and accessible to colleagues and clients, then there is no economic reason to deny requests to work flexibly.

For lawyers seeking reduced hours, if these lawyers are talented lawyers who the employer wants to retain and promote, then it is in an employer's financial interest to grant reduced hour requests. Many employers make the mistake of comparing the revenue generation of lawyers working full-time and lawyers working reduced hours and concluding that lawyers working full-time are more profitable.

However, the proper economic comparison is revenue generation of lawyers working reduced hours versus not working at all because many of these lawyers leave if their reduced hour requests are denied.

Additionally, employer concerns about overhead can be remedied by proper accounting to accurately attribute costs assigned to each lawyer and by developing creative solutions for shared office space and staff to minimize unnecessary expenses attributable to reduced hour lawyers.

What about designing a women-friendly employer? What does that mean and is that another priority with diminishing importance with the economic downturn?

Women have comprised 40 – 50 percent of law school graduating classes for 25 years yet they comprise only 16 percent of equity partners at law firms and their representation in other legal venues is similarly low. Additionally, about a third of women lawyers leave the profession for at least six months at some point in their career and 40 percent of women law firm lawyers with children work reduced hours in any one year. What these statistics demonstrate is a lack of alignment between the paths of women lawyers and the opportunities in the profession.

Designing a women-friendly employer means creating more paths to success for women to both be retained and promoted at their workplaces. This is not about preferential treatment—it's about the legal profession ensuring that half of its talent pool is not being underutilized or not used at all. Designing a women-friendly employer is about creating an infrastructure for women to thrive, in addition to men, in these areas: representation, mentoring, networking, compensation, work/life balance, promotion, training and leadership.

With all of the rapid changes facing the profession, how can lawyers best prepare for their survival in this new landscape?

For lawyers to thrive in today's legal environment, they must understand the economic and managerial challenges facing their employers. Once lawyers understand how the profession in which they seek to practice is changing and what demands are being placed on legal employers to create a new workplace, they must become their own entrepreneurs.

In other words, lawyers must demonstrate creativity, initiative and resilience to chart their own course rather than wait for senior lawyers to show them the way. In doing so, lawyers should not only focus on doing top notch work. They should focus on all of the other intangibles to success that differentiate those lawyers who truly thrive and those who wither. These other intangibles include strategies to manage and develop skills in mentoring, leadership, work/life balance, negotiation, time management, networking, and transition.