James Wilber, Editor

Successfully Dealing with the HR Department In Setting Lawyer Compensation

By James Wilber

Lawyers and law departments do not fit neatly into most company's salary plans, and the reality is that many corporate compensation schemes significantly underpay legal professionals.

Business people are, of course, the heart and soul of a company and its operations. They and their divisions produce the revenue and provide the profits. Much of what a corporation does, therefore, naturally is consistent with what they and the business itself need. Company-wide salary plans are built around its business people.

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Setting appropriate compensation for employees who work in service departments (accounting, human resources, law, etc.) is more difficult than for those who are involved in business operations. For one thing, service employees represent only a small part of a company's salary plan. Setting compensation for most service employees, however, is not too problematic because most are paid in relation to local compensation markets and it is not difficult to slot them according to the markets. A bookkeeper in the accounting department or an employment specialist in the human resources department is going to be paid a similar amount no matter the size of the company, its geographic location or the industry in which it operates.

The market for in-house lawyers is different. It is typically a national market. The company's industry can have a huge impact on compensation levels. Furthermore, law departments compete not only with other companies for their legal talent, but also with private law firms.

In those corporations that use the Hay system of compensation, the difficulty in reconciling the system with the market for lawyers can be significantly increased. The Hay system places heavy emphasis on attributes that are often absent in law departments. For example, the more employees who report to the person whose compensation is being set, the higher the compensation, yet most law departments are not large and have flat or relatively flat organizational structures. Furthermore, the Hay system rewards employees in relation to the size of their budget responsibilities. In non-operating units, like a law department, budgets are small in comparison to the divisions that produce a company's revenues. Overall, the Hay system can be so anti-lawyer, if you will, that the first question we ask a general counsel who calls with a compensation issue is whether his or her company uses the Hay plan.

The Lawyer Compensation Market

A general counsel who is trying to ensure that compensation for his or her lawyers — or even for himself or herself — is competitive, needs to understand the labor market for legal professionals. The market is characterized by the following:

- Recent fluctuations in salaries for entry-level lawyers have been significant. Compensation that rose consistently yet relatively slowly each year during the 1980s and early 1990s saw dramatic increases during the economic boom and the dot-com frenzy of the mid-to-late '90s, only to have leveled off during the past two years or so. Accurate compensation-setting requires an understanding of whether it is a buyer's or a seller's market, and the ramifications of each.

- More than ever, there is a market demand for lawyers of high quality and significant experience. As it has become more and more difficult to get clients to pay for the training of inexperienced lawyers, law firm leverage has become harder to attain and increased emphasis has been placed on getting work to higher paid but more efficient legal professionals. Demand for these lawyers has had an upward impact on market compensation.

- The demand for experienced lawyers has had an even greater influence on inside lawyer compensation because, traditionally, most law departments do not hire entry-level lawyers.

- More and more, in-house counsel are being required to justify their pay based on the extent to which they add value to a company's overall operations and business. They have been able to demonstrate a number of ways in which they do so, including: better knowledge of the company and its challenges than is exhibited by outside counsel; a trend of referring more of the routine work to outside law firms on a volume, price-sensitive basis, while retaining more of the important, strategic legal work for themselves; and superior cost-effectiveness when compared to outside counsel, at least in well-managed law departments.

- More than ever before, law departments compete with private law firms for legal talent. Because the quality of in-house practitioners has risen to a point where they are as highly-skilled and well-credentialed as the best of their law firm counterparts, these lawyers are in more demand than ever by law firms.

- Lawyers are mobile and the labor market for legal professionals has clearly evolved into a truly national (and for some companies, international) market. This expansion of the market has introduced more competition, and therefore higher salaries, for legal professionals.

- As has been true in law firms for some time, in-house lawyers are more likely to be compensated at different levels for different legal specialties. That is, the market has been made more competitive by the introduction of specialty-based factors. Just like law firms that have to compensate certain partners more highly because of the type of practice in which they engage, law departments have had to do the same because the amount of specialization and the sophistication of the practice specialties have both increased for in-house lawyers.

Compensation Surveys

In addition to knowledge of the labor market for lawyers, general counsel need to understand the importance of salary surveys — and how to use them effectively — in their efforts to ensure that their companies' compensation plans allow them to attract and retain the lawyers they need. Compensation managers in human resources departments rely heavily on salary surveys. Understanding how such surveys work, and, most importantly, ensuring that the HR department uses legal-specific surveys are critical to being able to win approval for market-competitive compensation for lawyers.

Good examples of legal-specific salary surveys are the one done annually by *Corporate Counsel* and the *Law Department Compensation Benchmarking Survey*[1] published annually by Altman Weil, Inc. In addition, because law departments compete with law firms for legal talent, it is helpful to have access to law firm compensation data.[2] Good salary surveys slice and dice data in several helpful ways. For example, lawyer compensation data are categorized by geographic location (corporations in the Northeast and in California typically pay higher salaries to their lawyers than companies in, say, the Mountain West), by size of the company (measured by both revenues and the number of employees), by size of the law department (measured by the number of lawyers), by years of experience of the practitioner, etc.

Salary surveys, however, are only one tool among many, and even then there are some limitations on their usefulness. Survey data, for example, are not the equivalent of what is commonly referred to as market compensation. That is, compensation levels on a par with data in salary surveys are not necessarily competitive with the market. This is so because surveys lag behind the market. Survey data are almost always at least a few month's old due to the time it takes to collect and publish them.

It is also important to understand that compensation surveys are quantitative only — they do not identify the quality or breadth of experience of individual lawyers. A qualitative analysis needs to accompany and supplement the quantitative one. Thus, for example, to the extent that a specific law department's lawyers are of higher caliber than those typically found in-house, surveys will underestimate appropriate compensation levels. Similarly, the level of complexity or strategic importance of the legal work being handled in-house will have a bearing on compensation. Again, the extent to which these exceed what is typically seen in law departments, the more likely that survey data will underestimate appropriate compensation levels.

Other evaluative factors come into play as well. Supply and demand dictate market conditions, and lawyers with expertise in practice areas more in demand can command compensation that is higher than for those practicing in areas of lesser demand. This is another aspect of the required qualitative analysis that needs to be done.

Conclusion

General counsel who want to be able to secure compensation that will attract and retain lawyers of the

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requisite quality and experience should take the following steps:

- identify and obtain legal-specific salary surveys
- classify the different lawyer positions in the law department pursuant to the position definitions contained in the salary survey, thus allowing apples-to-apples comparisons between lawyers in the survey and lawyers employed by the company in question
- review salary data for equivalent lawyers from private law firms
- conduct the necessary qualitative analyses

After these steps have been taken, the general counsel should take the most relevant elements from the quantitative and qualitative analyses and fashion them into a cogent argument that can be presented to the HR department. If these steps are followed, it is much more likely that the law department will be able to attract, motivate and retain the lawyers it needs to deliver high-quality legal services to the company. ◆

[1] The *2003 Law Department Compensation Benchmarking Survey* contains compensation data on more than 7,000 lawyers employed by 404 business corporations in the U.S.

[2] See, for example, the Altman Weil *2002 Survey of Law Firm Economics.*

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