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Using Benchmarks and Performance Metrics to Make Better In-House Compensation Decisions

By Marci M. Krufka

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Determining appropriate compensation for in-house counsel is typically a challenge for general counsel and human resources professionals in corporations. Simply slotting lawyers into existing corporate salary levels can ignore the realities of the value of lawyers in today’s extremely competitive legal market. In addition, utilizing standard company performance metrics may fail to take into consideration important lawyer-specific performance criteria that should be used in setting compensation. In order to more effectively determine appropriate compensation levels, a law department should utilize legal industry compensation benchmarks and legal-specific performance metrics.

Compensation Benchmarks

Compensation benchmarks are critical to setting lawyer compensation in law departments. With the variety of corporations in America, in terms of size and industry, it is often difficult to determine which compensation benchmarks are most appropriate for a law department. When determining which benchmarks to utilize, it is important to keep in mind the different variables that affect compensation levels. These variables include geographic market factors, the characteristics of the organization and the characteristics of individual lawyers.

Historically, geographic location was a primary factor in determining lawyer compensation. Today, however, as lawyer specialization becomes increasingly important, the market for in-house lawyers is truly national. Geography is still a factor, but it is given less weight in setting compensation. A law department should still consider the implications of its location, particularly when it is in a region where compensation is significantly higher or significantly lower than national averages (e.g., New York metropolitan area). To look only at regional

information without considering the national legal market, however, would be a mistake.

The characteristics of the company will also impact which benchmarks are appropriate for the law department. Important variables include: the size of the company, both in terms of annual revenues and number of employees; the size of the law department; the ownership of the organization; and the company’s salary administration plan. There are significant differences in lawyer compensation based on industry, so the benchmarks you use should be industry-specific, if possible.

Finally, individual lawyer characteristics influence compensation. These characteristics include the lawyer’s area of practice specialty; the number of years a lawyer has been with the organization; and the number of years a lawyer has been in practice. It is also important to understand the methods by which benchmarking surveys classify different positions. For some positions, for example General Counsel, Deputy General Counsel, etc., there is obviously little confusion. For others, the line is not always so clear. For example, one who might be considered a “senior attorney” in your corporation may not be such in a benchmarking survey. It is important to understand the benchmarking survey’s definitions so that you can make apples-to-apples comparisons.

Many corporations continue to use law department benchmarks as a basis for lawyer compensation comparisons and decision-making. Many more corporations are now using law firm compensation benchmarks and data to analyze their compensation levels, especially as senior, retiring lawyers are replaced by experienced lawyers from law firms.

Performance Metrics

In many companies, lawyers’ performance is evaluated using standard company performance metrics. This typically works to the

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Following is a fairly comprehensive list of lawyer performance metrics used in evaluating in-house lawyers for purposes of setting compensation. The performance metrics are organized into six general categories which include:

Technical Skills and Legal Expertise
 Communication
 Judgment
 Client Service
 Professionalism
 Management Skills

Technical Skills and Legal Expertise

Does this lawyer have good technical skills?

Does s/he conduct thorough research and investigation?
 Does s/he conduct a thorough analysis of issues?
 Does s/he creatively apply laws and/or regulations to advance the company's business?

Does this lawyer have good negotiation skills?

Does s/he understand opposing positions/needs?
 Does s/he quickly identify important issues?
 Does s/he create win-win positions?
 Does s/he handle pressure well?
 Is s/he persuasive during negotiations?
 Is s/he articulate during negotiations?
 Is s/he decisive during negotiations?

Does this lawyer have a track record in predicting and achieving good results?

Does s/he prepare thoughtful cost and time budgets?
 Does s/he adequately consider likely outcomes?
 Does s/he communicate well with clients?
 Does s/he follow through until the objective is achieved?
 Does s/he learn from prior experiences?

Does this lawyer have the necessary legal expertise?

Does s/he have a good understanding of the client's industry?
 Does s/he know the client's business and objectives?
 Does s/he have a basic understanding in broad areas of law?
 Is s/he competent in her/his area of specialization?
 Is s/he capable of handling complex legal issues?

Does this lawyer have other skills necessary to be a successful lawyer in the department?

Is s/he comfortable in varied settings?
 Does s/he convey a professional image?
 Is s/he prepared and thorough?
 Does s/he have effective case and time management skills?
 Does s/he obtain favorable results?
 Does s/he demonstrate a high degree of emotional intelligence?

Communication

Does this lawyer have good written communication skills?

Does s/he communicate effectively in her/his writing?
 Is s/he persuasive?
 Is s/he concise?
 Is s/he articulate?
 Do her/his written communications contain an appropriate analysis of the issues?
 Are her/his written communications logically organized?

Does this lawyer have good oral communications skills?

Does s/he communicate effectively in oral communications?
 Does s/he explain difficult concepts in simple terms?
 Is s/he persuasive?
 Is s/he articulate?
 Is s/he decisive?

Judgment

Does this lawyer display good legal and business judgment?

Does s/he identify key legal/business issues quickly?
 Does s/he quantify the impact of various outcomes?
 Does s/he focus on the business objective?
 Does s/he have a practical orientation to advice and counsel?
 Does s/he use common sense to solve problems?

Client Service

Does this lawyer provide excellent client service?

Does s/he express thoughts to the clients in a clear, organized manner?
 Does s/he update clients regularly?
 Does s/he complete assignments on time?
 Does s/he return phone calls promptly?
 Does s/he return e-mails promptly?
 Does s/he know the client's business plan?
 Does s/he actively participate in client meetings?
 Does s/he have good operational/technical knowledge of the client's business?
 Is s/he relied upon as both a legal and business confidant?
 Does the client consider her/him integral to the client's success?
 Does the client respect her/him?
 Does s/he make planning/important decisions with the client?
 Does s/he practice preventive law?

Professionalism

Does this lawyer act with professionalism?

Does s/he maintain a standard of absolute integrity?
 Does s/he comply with the spirit of laws and regulations?
 Does s/he accept no compromise of her/his principles?
 Is s/he efficient?
 Does s/he operate with a sense of urgency?
 Does s/he foster camaraderie – a team player?
 Does s/he accept criticism as an opportunity to grow?
 Is s/he patient in her/his instruction of others?
 Is s/he respected by others?

Management Skills

Does this lawyer display good leadership and management skills (as appropriate)?

Does s/he enhance the success of others?
 Does s/he accept responsibility for her/his subordinate's actions?
 Does s/he foster the desire for others to follow her/his lead?
 Does s/he support quality efforts?
 Does s/he contribute to administrative tasks?
 Does s/he set and achieve professional development goals?
 Does s/he strive to educate others?
 Does s/he effectively utilize her/his time?
 Does s/he delegate appropriately?
 Does s/he meet deadlines?
 Is s/he organized?
 Is s/he knowledgeable on status of matters?

The lawyer's immediate supervisor generally rates these performance metrics. To get a complete picture, these metrics can, and should, be supplemented by ratings from the clients with whom the lawyer most often works.

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lawyer's disadvantage and has negative implications for lawyer compensation. Because an in-house lawyer's responsibilities are generally very different from those on the business side of the organization, and the structure of the law department is so different from that of other business units, it is very important that a law department utilize legal-specific performance metrics. (See page 9 for a list of such metrics.)

Some corporations will not allow

any departments to deviate from the enterprise-wide performance metrics. If this is the case in your company, you can always work with the human resources department to utilize legal-specific performance metrics in addition to standard ones.

Determining lawyer compensation can be a challenging process. With the use of legal industry-specific compensation benchmarks and legal-specific performance metrics, however, you are much more likely to set lawyer compensation at levels

that are fair, competitive with the market and consistent with the lawyer's performance. ♦

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