



Michael C. Ross

## How To Keep Those In-House Lawyers

By Michael C. Ross

**G**ood hiring practices are an important ingredient in maintaining a first-rate legal department. But even the best hiring decisions will be of little benefit if the lawyers do not stay with your company. Some turnover, of course, is unavoidable. Lawyers move. Family situations change. Sometimes, offers from other companies or law firms simply cannot be refused. But not all attrition is unavoidable. Here are some thoughts on how to maximize the retention of in-house attorneys.

### Compensation and Benefits

It is difficult, but not impossible, to retain high quality lawyers without a competitive package of compensation and benefits. Few companies provide any departments with blank checks for salaries, bonuses and other forms of compensation. And yes, even lawyers must somehow fit within the company's compensation structure. The question is where? Often the criteria for inclusion in higher compensation levels elsewhere in the business do not match up with lawyers' responsibilities. For example, there are often minimum numbers of supervised employees that are required for certain compensation levels. This requirement typically does not work well for in-house lawyers, particularly those in relatively small or medium-sized legal departments. As a result, general counsel must become strong advocates for a suitable framework for compensating attorneys in ways that fairly match their responsibilities.

Given the proliferation of law department-related surveys, it has become much easier for in-house lawyers to compare their situations with those of in-house counsel elsewhere. It is important, therefore, that senior members of the legal department keep abreast of the relevant markets that affect the department, including geographic area, industry and specialty. Whether lawyers think they are at, above or below market, the subject should be discussed openly at staff meetings, with explana-

tions readily available in cases where the company seems to be at odds with prevailing compensation elsewhere. This is important in order to avoid misunderstandings and inapt comparisons. Festering dissatisfaction with compensation will often lead to attrition. In some cases, retirement and health plan benefits will motivate lawyers to stay with a company. If equity compensation is available, the precise terms of the vesting schedule can be helpful when it comes to retaining good lawyers. Cash bonuses can also be subject to vesting and can create incentives to stay.

In some cases, of course, it will not be possible to meet attorneys' expectations for compensation. Fortunately, many lawyers are not motivated solely by compensation and will not change jobs merely to earn more money. For many, other factors may well combine to keep them loyal to the company.

### Technology and Staff Support

One of the prime motivators for many lawyers is how easy or burdensome their jobs are. High-quality lawyers, by definition, also tend to be hardworking attorneys. They thrive on solving legal problems but detest unnecessary administrative and logistical burdens. The key here is to make it as easy as possible for them to work hard, that is, to produce as much as possible for their clients.

In some companies, legal departments lag behind others when it comes to gaining access to up-to-date technology. Providing technological efficiencies — access to databases, portable computers, smart phones and other aids — can ease workflow logjams and make it easier for the lawyers to do their jobs. Providing technology that others in the company have can also enhance the stature and morale of in-house lawyers.

When it comes to support staff, the trend has been for a higher ratio of assistants to professional staff — the result of technological advances and cost-cutting initiatives throughout corporate America. This means that what staff support

**“...many lawyers are not motivated solely by compensation and will not change jobs merely to earn more money.”**

there is should be highly competent. Investments in high-quality administrative assistants should pay off because there are relatively few of them in the legal department and their overall cost is so much less than the cost of replacing lawyers. Effective, efficient support staff are, as the saying goes, worth their weight in gold.

In appropriate circumstances, allowing at least some amount of telecommuting can mean the difference between losing and retaining a valuable member of your legal department. For a strong performer who lives far from the office or who has various family commitments, the flexibility to work some days from home could very well make the difference between loyalty and departure.

#### **Evaluations and Rewards**

Your legal department should have a well-considered set of criteria for periodically measuring attorney performance. The criteria should reflect both the realities of the legal department's responsibilities and the company's business objectives and cultural values. The legal department should have a standard evaluation form that permits extensive comments. Careful grading is very important but comments can make the difference between an evaluation that the lawyer understands and one that he or she does not. Generalities may be nice, and they are easy, but specific details keep the evaluations honest and let the evaluated lawyer understand the basis for both positive and negative feedback. A key ingredient is input from the lawyer's clients. Although some business people will not welcome yet another administrative task, many will readily embrace the opportunity to criticize or praise the lawyer assigned to them.

Performance evaluations should be done on a regular basis — at least annually and preferably twice per year. The evaluation should be reviewed with the attorney in a pri-

vate conference. The lawyer should have ample opportunity to discuss the evaluation and question the grades and comments.

Many companies have downward evaluation programs, and some of them are effective. Fewer companies have upward evaluations and fewer still have upward evaluation programs that are effective. Carefully designed upward evaluations add to the general administrative burden but can be a source of very valuable appraisals of a lawyer's performance. Most effective systems protect the confidentiality of the subordinate's evaluations. Allowing subordinates the opportunity to evaluate their seniors sends a very positive message about how much management values a lawyer's views and judgment. But that is not enough.

For both downward and upward evaluations, consequences are critical. It may be obvious that compensation levels, bonuses and, where available, equity awards should be closely tied to evaluation results. Failure to pay for top performance — and, by the same token, not pay for poor performance — will lead to dissatisfaction among the best attorneys, precisely the ones that a company wants to retain. The system must have integrity and teeth. Although most companies do not follow the General Electric model of firing the bottom ten percent, it is important that poorly performing lawyers be let go if they have had ample opportunity to improve but don't. Failure to do so will weaken the entire department.

#### **Morale**

How the legal department performs in all of these areas contributes to morale, good or bad. Many lawyers, just like other company employees, place very high value on being treated fairly compared to their peers both inside and outside the department and the com-

pany. Management of compensation, benefits, support and evaluations can do a lot to keep lawyers at the company. But there is more.

Many lawyers want or need opportunities for advancement — either within the legal department or elsewhere in the company. This can often be challenging because of the steep pyramid structure of many legal departments and the specialties of the attorneys. It is therefore very important for legal management to be mindful of lawyers' ambitions and for company management to seriously consider lawyers for non-legal positions.

Despite differences in seniority, salaries, bonuses and titles, in-house lawyers need to have a sense of being part of a team if they are going to remain loyal. The team may be client-based or part of the culture of the legal department. Legal problems often involve multiple specialties, and cooperation is critical. A successful legal department will do some things together to strengthen the cohesiveness of the group. It may be nothing more than an annual Christmas party or it could include more regular social occasions. Whatever form they take, these outside activities can be an inexpensive way to create and maintain good will among the company's in-house lawyers.

The perception of the legal department by senior management can also be an important factor for an attorney who may be pondering whether to stay or leave. In some companies, the legal department and lawyers in general are regarded as necessary evils, a constraint on business plans and, particularly in the wake of Sarbanes-Oxley, a very expensive burden on the rest of the company. A successful legal department and its members, on the other hand, will have an image as facilitators, problem-solvers, team players and contributors to the company's

*continued on page 8*

**How to Keep ...** *continued from page 7*

overall business and cultural objectives. Some of this is accomplished by promoting teamwork, both within the legal department and with business constituencies. Soliciting business clients' input on legal department policies, procedures and evaluations can promote teamwork and enhance the perception of the lawyers' contributions to the enterprise.

There are no silver bullets, nor is there a one-size-fits-all program when it comes to retaining high-quality lawyers in any specific corporate legal department. Instead, each company and each legal department has its own values, objectives and issues. Nonetheless, legal management's attention to some of these ideas should help reduce unnecessary attrition. ♦

*This article is reprinted with permission from the Winter 2005 issue of GC California. Copyright © 2005 by ALM Properties Inc. Further duplication without permission is prohibited. All rights reserved.*

**Michael C. Ross** is the former Senior Vice President and General Counsel of Safeway Inc. He has an associate relationship with Altman Weil, Inc. and can be reached at [info@altmanweil.com](mailto:info@altmanweil.com).