ASSOCIATE BONUS PROGRAMS:

A COMPONENT OF SUCCESSFUL RECRUITMENT AND RETENTION

Paul J. Sullivan Click here

Introduction

Finding and retaining quality associates is one of the bigger challenges facing law firms. Competition for quality associates has always been fierce, but especially so when the firm is not one of the "big guys." Bonus programs can be a strong enticement in recruiting and retaining associates. This article will address specific issues regarding associate bonus programs, and broader issues of associate recruitment and retention — particularly in small firms.

A Bonus — A Share in the Profits

Adding a bonus component to compensation has been a widely accepted practice in non-legal industries for many years. Bonuses are used to reward employee achievement over and above established goals. In a sense, a bonus is profit sharing — the more profit an employee can contribute to the company, the more the company can afford to pay the employee. This same concept of contribution to the company applies to law firm associates. In essence, lawyers are the salespeople of a law firm. They produce the work that creates the revenue. Partners or shareholders share in the profits by leveraging the work of the associates, as well as the revenue partners themselves generate.

Associate Recruitment, Retention and Motivation

Recent law school graduates can be blinded by huge starting salaries offered by large, big-city firms. Although these firms demand long hours with high pressure, a new lawyer may not understand the personal impact of this requirement for some time. When an associate moves to another firm, the timeline from associate to partner or shareholder begins anew. A small law firm, especially one in a small city, must attract good associates by identifying and promoting the qualities that make small firm work rewarding — financially as well as personally.

The Bonus Concept: How It Works

With a bonus or incentive program, an employee is compensated in direct relation to his or her contribution to firm profitability. [1] Conversely, when market, economic or other conditions affect the performance of the company negatively, the employee shares in the downturn. One of the greatest benefits of a bonus program is that the firm can reward high performers. The secret to success is to create an environment where associates can make outstanding incomes themselves, and still contribute to the leverage pool of the firm.

Without a system to reward those who perform at the very highest levels, a firm may be undermining its goals. For example, it may come as no surprise that a firm may find itself with a poor performer. If the firm has fixed salary compensation, the poor performer adversely impacts the financial strength of the firm in work performance and in revenue. In addition, the poor performer may require a significant amount of time and effort on the part of management to motivate and improve performance. The poor performer who remains at the firm will have a negative impact on the outlook and morale of others in the organization. Others may see themselves working hard and making an effort, yet the poor performer very likely earns the same amount, but seemingly does nothing. Thus, a firm with no financial incentive system effectively treats all associates alike, providing no motivation for higher productivity or improved performance.

A Story about Bonuses

In the early years, a bonus as part of compensation was primarily reserved for the sales personnel of an organization. Commission on sales in many cases was the sole source of income for the sales force. Over time, companies learned that other parts of the organization could also be motivated to perform at higher levels if part of their compensation were based on the performance of the company. Today many successful companies now structure their compensation packages using bonuses for all employees.

As a former salesperson and sales manager for a major computer manufacturer for 12 years, I witnessed an unhealthy conflict between the sales and service departments of the company. Sales people were highly compensated for their efforts and were always the beneficiary of company incentive programs. Service employees (those who kept the machines running) were treated differently — there seemed to be a lack of respect for them in fact and in policy. Interestingly, the service people kept the company going. If the company could not support what was sold, it was only a matter of time before there would be no sales. In addition, the service people were face-to-face with the customers much more frequently than the salespeople were. A good service technician could make or break a salesperson.

As this company grew, the managers began to recognize the benefits of recognizing superior work of their service employees, and developed incentive programs for them. The result was not only higher compensation for those people, but a more positive morale and, ultimately, a reduction in the high turnover rate among these employees.

When I made a career change and had an opportunity to start my own business, I incorporated as part of our business development efforts compensation for our employees based on the profitability of the company. Non-sales people shared in company success. Our employees were paid on an hourly basis; but, as an owner, I shared with them my expectations for sales, company growth and certain levels of customer service we hoped to achieve. Bonuses were paid to everyone when we reached these goals and each employee, regardless of job description, had a personal interest in reaching these goals.

Views of the Legal Administrator

Now as a legal administrator, I have seen a big change in the attitudes of our firm's associates since we instituted a bonus program based on productivity. The firm had a subjective bonus program, but the associates never knew quite what to expect. About four years ago, the firm adopted a bonus program based on annual receipts. The associates receive an actual percentage of receipts once they achieve certain levels. The more they produce, the more they can make in personal income.

The productivity bonus program has motivated the associates. Because of the program's objectivity, the associates know where they stand and what they need to do to reach their own personal income goals. The firm also may include a discretionary bonus at year-end when there are extraordinary circumstances that may have limited the amount of receipts a particular associate produced. Those circumstances could be a result of illness, assignment to a particular project that reduced the receipts potential for this person, or simply an adjustment that management felt was necessary.

The Bonus Structure

The actual structure of the bonus program is the key to success, although it is not easy to create. The program must be generous enough to provide above-average earnings in a highly successful organization; yet, the base compensation must be enough to attract and retain quality people in those times when overall results are not up to expectations. [2]

In an organization where non-sales people, such as the associates, receive a bonus as part of their compensation, many work and assignment decisions are made that are beyond their control but will affect their bonus. For example, an associate may be assigned less-than-glamorous non-billable functions, particularly in a firm where there is limited use of paralegals. In addition, work performed by associates may be eliminated from the final bill, because it took too much time or the attorney in charge felt that the work should not be charged to the clients. These circumstances are usually beyond the power of the associate to change, but result in low productivity and receipts, which could result in a lower bonus.

In comparison, another associate may be assigned functions that are later billed for all the time worked. That associate will show higher productivity and receipts, which would, in a purely objective bonus program, result in a higher bonus. The issue of fairness for associates is a delicate balance between rewarding good performance and assuring that the associate is not subject to another's poor performance or poor management decisions. Each participant must have performance criteria so that achievement is within his or her control, and each person should have a fair and equal chance to achieve the goals.

Developing a Bonus Program

Developing a meaningful bonus program requires financial analysis of the firm's revenues, salaries and expenses. A good understanding of the firm's cash outflow and overhead is the key to any successful bonus program. Once a bonus program is developed, the firm must monitor it continually to keep the program in step with changing market conditions.

One component of developing a bonus program is to determine how the firm's salary structure compares to other firms in its market. There are serious antitrust issues to consider when trying to find out exactly what other firms are paying. [3] However, salary range information is usually common knowledge within a firm's area, and should be easy to acquire. The firm's salaries depend on many factors. James Cotterman explains that "[s]alary levels vary around the nation. Factors such as firm size, population density, geographic region and practice specialty all affect salary." [4]

The type of work the firm performs also has a bearing on the salaries it pays. For example, insurance defense firms often pay associates less than boutique firms. Compare firms that have similar practices. The compensation plan should be competitive with comparable firms, but it should also give the associates incentives to be good producers. Certainly the firm's benefits, such as healthcare, insurance, etc are part of the compensation package and should be considered when evaluating firm salaries.

Remember that associates provide leverage for the owners of the firm. A portion of the receipts they bring in creates additional earnings for the owners. At some point the revenue generated by an associate matches the invested expense the firm makes in that associate. This is called the "break-even point" — the point where revenue matches expense and there is neither profit nor loss. Revenue generated beyond the break-even point is profit to the firm. [5] The next step in creating a bonus program is to calculate the break-even point for an associate.

Calculating the Break-even Point

To find an associate's break-even point, consider all the costs involved in the employment of the associate — both direct and indirect. Direct costs include an associate's salary, benefits, memberships, professional liability insurance and all other expenses attributable to his or her employment. Indirect costs include everything else — the associate's share of occupancy expense, support staff salaries, equipment costs, etc.

There are various methods to allocate indirect costs to all lawyers in a firm. In one method, every expense could be allocated on a pro rata basis, but this effort far outweighs the benefits. [6] One of the easiest methods to determine an associate's indirect costs is to assign a weight to each timekeeper — for example, a weight based on contribution to the firm. Partners' weight may be 1.5, associates' 1.0, and paralegals' .5. New associates who have not reached their full potential may be weighted less. Calculate the total weights for all employees. Divide the total amount of indirect costs by the total weights. The result will be the indirect cost of each individual — the break-even point. (See the chart below.) Then, calculate the direct cost of each individual.

Calculation of Individual Indirect Costs

Total Indirect Costs = $110,000

Partner A weight = 1.5
Partner B weight = 1.5
Associate A weight = 1.0
Associate B weight = 1.0
Paralegal weight = .5

Total Weights for all Timekeepers = 5.5

Divide total indirect costs by total weights

$110,000/5.5 = $20,000 of Indirect Costs
Multiply each timekeeper's weight by the indirect costs ($20,000)
Partner Indirect cost (1.5 X $20,000) = $30,000
Associate Indirect cost (1.0 X $20,000) = $20,000
Paralegal Indirect cost (.5 X $10,000) = $10,000

Associate Break-even Point

Base Salary	$50,000
Employment Taxes (FICA, Medicare, Unemployment)	5,000
Workers Compensation Insurance	1,000
Health, Life, 401(k) costs	15,000
Professional Liability Insurance	2,000
Professional Dues	1,500
Client Non-reimbursable Expenses (Mileage, Phone, etc.)	12,000
Total Direct Costs	86,500
Total Indirect Costs	20,000
Total Overhead for this associate (break-even point)	$106,500

In this example, the firm's indirect costs are $110,000. After assigning a weight to each timekeeper, the total weight for all timekeepers is 5.5 and the value for each point is $20,000. Associates' points are 1.0; $20,000 times 1.0 is $20,000, the amount of the indirect costs for an associate. The total direct cost for the associate is $86,500. The total overhead for the associate, the sum of the total direct and indirect costs, is $106,500. The associate's break-even point, the point where revenue and expense match, is $106,500. An associate must generate at least $106,500 to cover the firm's investment.

Expected Associate Receipts

The next step in developing the bonus program is to determine a reasonable expectation of production for an associate of this level; that is, what revenue the firm can reasonably expect. Assume the associate's billing rate is $90 per hour and that the hourly goal is 130 billable hours per month, which would be a total of $11,700 per month and $140,400 per year.

Not all hours worked will be billed, and not all bills will be paid by clients. A realization rate is the estimated percentage of hours that can be billed and will subsequently be collected from the client. For this example, estimate a realization rate of 90%; that is, 90% of the associate's hours will be billed and collected. With a 90% realization rate applied to the expected productivity, the firm can estimate revenue of $126,350 per year from this associate. Based on these expectations the associate would produce $126,350 in annual receipts for the firm. If overhead has been calculated properly, the associate would generate $19,850 profit for the firm over and above the associate's $106,500 break-even point.

Calculation of Expected Associate Receipts

Hourly billing rate	$90 per hour
Hourly goal per month	130 hours
Monthly billing: $90 X 130 hours	$11,700
Yearly billing: $11,700 X 12 months	$140,400
90% realization	
90% X $140,400	$126,350
Excess receipts/profits:	$19,850
$126,350 - $106,500 (Break-even)	

Sharing Profits

Once the break-even point is known, all excess receipts — the profits — go directly to the owners' compensation. The next question is — how much of the profits are the owners willing to share with employees? Most bonus programs do not share the first dollar of excess profits. The associate is expected to generate revenue to meet the break-even point — in this example, $106,500 — at some level below 100% of the associate's peak working capacity and sophistication. The firm will only make a profit if the associate generates more revenue than the cost to the firm as the associate moves higher and higher in working capacity and sophistication.

A Sample Bonus Formula

A good general rule is to create a bonus system based on the assumption that the associate will achieve production at 100% of the associate's goal. Bonuses would be paid for performance beyond that level. In the example, the proposed bonus program would apply after the associate reached a performance level of $126,350 — the associate's expected productivity.

Please note that these figures are for illustration purposes only, and in no way reflect actual results of any specific firm. In addition, the list of expenses was created for purposes of the calculation and is not a complete list in many instances.

Meeting firm expectations with no added incentive can be sufficient motivation for many associates. On the other hand, structuring a bonus program to encourage associates to produce $150,000 or $175,000 in receipts clearly benefits the owners. The encouragement comes from sharing some percentage of these receipts with those associates.

A Proposed Bonus Program

Using the above figures, assume that the firm bonus program is structured so an associate earns:

- 10% of all receipts from $130,000 to $150,000 and
- 15% of all receipts above $150,000.

Example 1:

Associate produces $150,000 in receipts	
Expected receipts were $126,350	
Additional receipts: $150,000 - $126,350	$23,650
Associate receives 10% of additional receipts: 10% X $23,650	$2,365

Example 2:

Associate produces $175,000 receipts	
Expected receipts were $126,350	
Additional receipts: $175,000 - $126,350	$48,650
Associate receives 15% of additional receipts: 10% X $23,650	$7,297.50

If an associate produced $150,000 of revenue, the associate would have produced an additional $23,650 in receipts above expectation. The associate would earn an additional 10% of the $23,650 that the associate generated above expectations, or $2,365. The firm would experience $3,800 in additional receipts — profit to the firm.

If an associate produced $175,000 of revenue, the associate would have produced an additional $48,650 in receipts above expectation. The associate would earn an additional 15% of $48,650 that the associate generated above expectations, or $7,297.50. The firm would realize over $40,000 in additional receipts — most of which would be distributed to the owners.

In this scenario, the associate is happy to be rewarded for extra effort. The firm's owners are happy to receive extra income due to the extra efforts of the associate. The firm's compensation package is better than other firms in town — at least for this associate— and the firm would only be responsible for the extra expense when the expense is funded by the revenue generated by the associate. [7]

Unlimited Bonuses

Some organizations are reluctant to make bonus compensation unlimited. However, if a company places limits on how much their salespeople can earn (or in a law firm, what associates can earn), the company (the firm) is also placing limits on how much revenue those same salespeople (associates) will bring in. The objective should be to help salespeople earn enormous amounts of money for themselves.

If the compensation plan creates resentment for accomplishments, something is wrong — either with the plan or with the employer's understanding of the value of the sales force. Salespeople bring in the revenues that fuel the operations of the business that allow everyone to have a job. Compensate employees for their performance and structure their compensation so they do well. Then everyone in the company is happy for the increased revenues.

Subjective Versus Objective Bonus Programs

Bonuses can be subjective, or based on the achievement of specific goals, or a combination of both.[8] There are differing opinions on the merits of each type of program. A subjective bonus system with low salaries and high bonuses on the surface may seem best because management can reward those people they deem their best employees. However, a potential problem with this rationale is that it operates contrary to the goal of the bonus program. If the firm has a bad revenue year and bonuses must be scaled back, the percentage of loss to good performers is much greater than to those who would not get much of a bonus anyway. In effect, the best performers are penalized to a greater extent than the poor performers. Incentive programs that are based on effort and measurable performance appear to have the most support in management theory. Once again, the structure of the program is key.

Some firms use the same formulas based on revenues for all associates regardless of the type of work they do or the length of their tenure at the firm. Arguments favoring this method recognize that more difficult work results in higher rates resulting in more potential bonus dollars for that associate. In addition, longer tenured associates should be able to earn more because of the higher level of their work; that is, there would be less non-billable activity. Arguments against this method point out that a firm could lose a future superstar because the goals are unrealistic early on. The associates may feel they have worked very hard, but may not feel they are sufficiently compensated for the time worked.

Bonus Timing

Another potential area for inequities in the subjective bonus method are those instances where bonuses are given only once per year. Unless there are well-kept records of performance, management may have a tendency to rely on events that have occurred in recent weeks or months — which may cloud their judgment when assessing performance over a full year. In addition, employees have a tendency to perform better around bonus time — knowing that management is in the process of evaluating them for bonuses. Subjective bonus programs have a tendency to cause dissension, low morale and, ultimately, poor performance. [9]

Associates' Views of Bonuses [10]

Interestingly, in informal discussions, associates reported that salary and bonus are not their sole motivations in working for their firms. A typical comment was "The bonus system doesn't necessarily motivate me to work harder. I want to do the best job regardless of the bonus. I want the partners to be pleased with the work that I do and as long as they are satisfied, and let me know they are satisfied, then I am pleased to simply earn my salary. That all said, however, the bonuses are really nice to get, too."

Some associates thought the bonus program not only made them work harder, but also provided some insight to profitability — a necessary attribute for someone who is striving to be an owner of the firm. "It gives me a better business sense of which files make money and which files don't. It also makes me focus more on getting paid for the tasks I am performing, i.e. making sure my time entries are valid and payable." [11]

There were also some negatives reactions to bonus programs. More than one associate responded by saying a program based solely on revenue could lead to padding of bills or even rushing through tasks at the expense of quality. There was also a comment made that bonuses based on productivity could create unwillingness on the part of the associates to work on files that were less profitable. Associates also mentioned that programs structured strictly on productivity could be a disincentive to spend time on professionalism and professional growth programs.

Most of the people discussed bonus programs based on revenue. Revenue is just one of the measures in determining the value of an associate, and several individuals felt that there should be some measure of subjectivity or a discretionary component of any bonus system. A subjective component in a bonus program rewards a quality associate who did not have the chance to earn bonuses based on revenue, through an inequity in either the system or some extraordinary reason.

More than Bonuses: Recruiting Associates to a Small Firm

A bonus system is only one component in attracting smart associates to a small firm. The question is: How can a firm, that is either small in size, or located in a geographical area where salaries are typically less than in big cities, recruit, retain and motivate associates? While a solid bonus program can be important, there are many other small firm attractions:

➢ **Quality of life**: Issues, such as cost of living, short commuting time, and collegial working conditions, can be strong recruiting tools, especially to candidates who come from rural backgrounds. In a rural area, a commute to work could be 15 minutes. A home could be purchased for half the cost of one in a major city. Recruiting someone who grew up in a large city is more difficult because income expectations are naturally higher. In addition, in some cases, an associate who moves to a smaller area can become disenchanted with the small town environment. The challenge to the firm is to retain associates who were raised in small towns and not attracted by higher big-city salaries.

➢ **Management style**: Small firms are often less structured. Management is usually approachable whereas in a large organization it can sometimes be impossible to speak directly with the top people. In a small organization, decisions can be made quickly to facilitate change that can benefit both the clients and the firm.

➢ **Personal achievement**: In a small firm, associates can be noticed for outstanding effort or achievement, and can be important players in a smaller group of lawyers.

➢ **Partnership track**: The ownership/partnership track in a small firm is usually more defined and it can take less time to reach partnership than in a larger firm.

➢ **Salaries**: Salaries are relative to the cost of living in the geographical area in which a firm is located. Starting salaries for some associates in rural areas equate to similar salaries in big cities at twice as much or more. In many non-major metro areas, some associates may make less money than many legal secretaries in large cities, such as New York, Los Angeles or Chicago, but that salary can buy more.

Associate Retention and Motivation

Beyond recruiting associates is the goal of retaining them. [12] Assuming the associates are productive and have what it takes to stay with the firm, the firm must focus on how to motivate them to be productive, maintain their quality of life issues and still meet the goals of the firm. Part of the answer may lie in bonuses. Step rate salaries based strictly on seniority are not only old-fashioned, but are counter productive. To give an average producer the same rewards as someone who is a shining star is not only unfair, but will force the high producer to eventually look outside the organization for something that is more rewarding to his or her individual efforts.

Conclusion

There may be as many different associate bonus programs in law firms today as there are firms. In personal conversations with law firm administrators and associates the consensus is that most firms have them. The programs seem to motivate the associates to work harder and generally most associates like the programs. Informal discussion indicates that the programs must continually be fine tuned to assure that each associate has a fair and equal chance to achieve the firm's goals.

An associate bonus program can have a positive impact on a firm's revenues. Associates who receive bonuses based on productivity can be motivated to be more productive, thus generating more revenue for the firm. In addition, bonus programs can provide associates with a better understanding of firm finances, particularly revenue. Finally, a balanced bonus program can add just the right incentive to strengthen associate recruitment and retention.

Other Resources

Articles

ALA Research Study. "Associate and Staff Bonuses: A Primer on Discretionary Compensation in Law Firms." IL: Association of Legal Administrators. Click here

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Rickard, Lori-Ann and M. Diane Vogt. Keeping Good Lawyers: Best Practices to Create Career Satisfaction. IL: ABA Law Practice Management Section. 2000.

End Notes

[1] Joseph B. Altonji and William G. Johnston suggest setting performance (and compensation) guidelines for various phases of associate development that consider both objective and subjective criteria. Altonji, Joseph B. and William G. Johnston. “Time to Rethink Associate Compensation.” Hildebrandt International. 2002.

[2] For an excellent overview of an Altman Weil Inc. survey of compensation systems in law firms and how firms compensate partners, associates, paralegals and staff, see Cotterman, James D. “Declassifying the Paycheck: Firm Compensation Systems Don’t Always Make Cents.” *Legal Management*. May/June 2003. Click here

[3] See the “Antitrust Guide for Members of the Associate of Legal Administrators” for detailed information about the antitrust implications of discussing billing rates and salaries.

[4] Cotterman, James. D. Compensation Plans for Law Firms, 3^{rd} Edition. PA: Altman Weil Inc. 2001.

[5] For a good discussion on how to determine an associate's contribution margin — revenue brought into the firm by the associates minus the cost of associate programs — see George, Molly. "Do You Get What You Pay For? Measure Your Associates' ROI." *Legal Management*. March/April 2003.

[6] For an excellent discussion of revenue and expenses, and how to determine profitability, see Mudrick, Howard. "Who Wins the Profitability Track Race: Know Where the Money Comes From — and Where It Goes — at Your Firm." Association of Legal Administrators. *Legal Management*. Volume 19, No. 6. November/December 2000. Click here

[7] Author's note: There are other methods to measure results to determine bonuses besides revenue, such as origination credits based on new business brought to the firm, billable hour goals and overall firm profitability that are not discussed in this article.

[8] Some firms distribute bonuses to all associates based on the firm's profitability for the year. See Cotterman, James D. Compensation Plans for Law Firms, 3^{rd} Edition. Altman Weil Inc. 2001.

[9] "Although virtually all firms have annual performance reviews, money talks. If an associate received a smaller bonus than other colleagues at the firm, he or she needs to be asking what message is being sent." "The Bonus Question." Seltzer Fontaine Beckwith: Legal Search Consultants. *Hot Tips*. 2003.

[10] For an interesting article on associate satisfaction, see Saab Fortney, Susan. "An Empirical Study of Associate Satisfaction, Law Firm Culture, and the Effects of Billable Hour Requirements (Part One*)." State Bar of Texas. *Bar Journal*. December 2001.

[11] Ed Poll discusses ways to help associates learn to think like businesspeople in "What Does It Profit the Firm: How Associates Fit in the Profitability Mix." *Legal Management*. January/February 2002. Click here

[12] For more information on how a firm might attract and retain good associates, see Saab Fortney, Susan. "An Empirical Study of Associate Satisfaction, Law Firm Culture, and the Effects of Billable Hour Requirements (Part Two*)." State Bar of Texas. *Bar Journal*. December 2002.