Memo to Firm Leaders: Don't Go Overboard With Layoffs

The American Lawyer
By Patricia Gillette
March 01, 2010

"Women and children first."

Most people would probably associate that phrase with the Titanic, where the men decided to save the women and children as the ship was heading straight into an iceberg. Law firms, however, facing the biggest iceberg in the history of the industry, appear to have turned that phrase on its head.

What is the "iceberg" law firms are facing? Clients balking at the outrageous billable hour rates that arise primarily from the staggering race to achieve the highest profits per partner. Logic would seem to dictate that large firms should change course and re-evaluate the traditional strategies that got them here so that they can avoid the iceberg. But logic isn't the driver behind most decisions at large firms. Instead, firms have kept their arcane structures -- large downtown office spaces; high associate salaries (particularly for first-year associates); rate increases on Jan. 1 for no apparent reason other than to mark the new year; and traditional billing structures -- and instead taken a sword to their employee ranks. Thus, they act on their knee-jerk reaction to offload people in exchange for the immediate reward of a lower bottom line. And who goes first? Women and "law firm children," otherwise known as associates.

According to a recent survey from the National Association of Women Lawyers, since 2008, 95 percent of large law firms have shrunk their partner and associate ranks. Some firms have made this process transparent. But most have tried to fly under the radar, quietly de-equitizing partners (with the concomitant reduction in pay), reducing virtually anyone working on a part-time schedule, and reducing the number of associates.

This process has had an adverse impact on women, in part because of the elimination of part-time lawyers, most of whom are women, and in part because of the decrease in compensation within the partnership ranks for women who are already paid less than men in most firms. Associates also have suffered across-the-board reductions of their ranks in large law firms and the decreasing value proposition of making partner. Indeed, associates are realizing that the deep cuts of 2009 for many firms reflect a callous disregard of those very associates whose endless hours on the job made profits per partner soar during the boom years.

In their rush to reduce the work force first and worry about its impact later, however, large law firms have missed two critical points: 1) to be successful, a layoff must be strategic so that it reduces the work force in a way that ensures the core business can be done successfully in the future by the remaining employees/partners; and 2) a firm's culture will be forever changed by a layoff.

Let's start with how the layoffs are handled in law firms. Based on the false premise that part-time lawyers are less "valuable" in a reduced work force, many firms start their layoffs by cutting out a substantial number of their part-time lawyers. This strikes me as a business decision that is not backed by rational thought, but rather by an extension of the stigma and negative stereotype that traditionally has characterized part-time programs in law firms -- if you aren't billing 2000+ hours (sometimes regardless of the quality), you are not committed and, therefore, you are not valuable. And if you are not valuable, then you are not needed.

With increased client demand for streamlined and cost-efficient legal service models and with the entry of new lawyers into firms, however, this stereotype is just not valid. Part-time lawyers, contract lawyers, and lawyers who don't want to of the best and brightest lawyers coming out of law school choose not to work the 2000+ hours considered to be "full time" (as that is defined in law firms now). Some make that choice because of child care issues, others because they believe that the promised partnership pie is simply an illusion or not a prize at all -- but rather a burden of liability with very little upside for many years to come. The wholesale termination of these attorneys, based solely on their status, ignores the mindset of many lawyers who are entering the legal profession today (and it sends a message that people who choose that path have no future in large law firms).

Similarly, taking actions that result in the reduction of women in the workplace (whether because their part-time positions are eliminated or because their compensation is so diminished that they leave) is impractical and has ramifications in the business world. Like it or not, clients are insisting on diversity from their law firms, as general counsel increasingly are women who want to see that the legal teams presented to them are diverse. Moreover, study after study show that women attorneys add value and bring different skills to the workplace from their male counterparts. Simply put, allowing the number of women attorneys to be driven down by a process that ignores quality of work and overall contribution is bad business.

CONSIDER SOME ALTERNATIVES

That is why law firms should first be evaluating whether layoffs are even necessary, instead of assuming that they are. In fact, as any good business person knows, there are other ways to achieve cost savings without layoffs. These alternative measures also can enhance the culture and increase the commitment of the existing workforce, instead of weakening or even destroying it. For example, what if large law firms considered the following alternatives to lowering costs:

• Forget about the almighty profits-per-partner contest, which forces de-equitization decisions and devotion to a meaningless numbers game, and make decisions that are tied to the success of the business and the clients upon whom large law firms rely;

• Reduce the number of first-year associates hired and pay them less. By continuing to pay high salaries to first-year lawyers, law firms breed the expectation that salary is not attached to value, that somehow because someone went to law school he/she should earn twice or three times as much as those who went to medical school or business school;

• Re-jigger the law firm model to focus on efficiency and competency -- not hours in the office or hours on a project -- but on productive time doing quality work. That may mean that a firm keeps an 80 percent associate whose work is stellar over a full-time associate who bills 2500 hours at a less productive and lower qualitative level;

• Commit to diversity so that the result of any reduction in the work force is not the elimination of women and people of color in partnership positions or in the associate ranks, but the retention of a work force that has the richness that comes with different genders and different colors.

• Encourage and reward loyalty as any firm that is held together by profits per partners cannot survive in the long run.

If the iceberg made up of disgruntled clients and disillusioned associates is to be avoided, law firms have to change course. But, in doing so, law firms should reject the automatic default to actions that adversely impact diversity and culture. Now is the time for strategic, bold and course correcting decisions that will ensure the future of the firm for more than the next profits-per-partner list.

Patricia Gillette is the founder of the Opt In Project. She is a labor and employment partner at Orrick, Herrington & Sutcliffe. She can be contacted at pgillette@orrick.com.

This article first appeared on The Am Law Daily blog on AmericanLawyer.com.