



ATTORNEY SEARCH

By Carey Bertolet

The Sky is Falling! What Comes Down When Salaries Go Up

The salary raises across the country this year had the initial effect of making associates at large firms nationwide sometimes as much as \$20,000 richer and, presumably, happier. The wave of pay increases typically touched many mid-sized and most large law firms across the country. Generally speaking, the raises were substantial. Imagine, for example, a first-year associate who agreed to join a firm last fall for \$125,000, who will have already received a raise to as much as \$145,000 when he/she joins the firm in September. Certainly, one would be hard-pressed to find an associate who greets such news with disappointment or regret.

As with all popular trends, however, the 2006 salary hike has its share of detractors. To say it differently, some have suggested that an associate's raise may come at a substantial price (obvious but unintended pun). Some commentators have suggested that the increase in associate pay will lead to an erosion of work/life balance in law firms and that it is ultimately the highly paid lawyer who will suffer the consequences. In this author's opinion, the Chicken Little predictions about the backlash of associate salaries are largely misguided. An associate's lifestyle is ultimately determined by factors other than an increase in salary. In fact, law firms must remain cautious in hiring after a salary hike. Moreover, with the gap between the salaries at large firms and other legal employers widening, lawyers and law students must become savvier about what they can expect from the marketplace.

Will Lawyers Have to Work Harder for the Money?

Not surprisingly, people associate making more money with increased obligations at work. But does it follow that an associate making 15% more money than he/she did last year will have to work 15% more hours? It's unlikely.

First, as most associates or former associates at large firms will tell you, there are a myriad of factors that contribute to how many hours one works. These factors may include the demands of a particular client, the culture of the firm, and the lifestyle and "work style" of the partners in the group, to name a few. Oftentimes, lawyers have internal drives that are the only motivation they need to stay in their office late into the evening. The same drive that propels a type A lawyer to graduate at the top of his/her law school class and to interview with the top national and international law firms may be the single largest factor in determining how many hours that lawyer works. In fact, the hours billed by an associate may vary widely depending on the time of year, the department the associate is in, and the economy.

In my own personal experience, an increase in associate salaries does not translate into an increase in hours worked or necessarily suggest a compromise in lifestyle. My perception was that my law firm (which raised salaries dramatically, along with other large firms) became more conscientious about monitoring those lawyers whose hours were far below acceptable standards, but there was no new minimum that average associates needed to reach. Indeed, we have not seen minimum billable hour requirements increase at firms that raised salaries.

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One of the reasons for this is competition. While there are a number of reasons that a firm will raise salaries, the ability to compete for the most coveted lawyers and law students is the one most frequently cited by law firms themselves. To paraphrase any number of law firm-generated press releases, they have increased salaries to continue to attract talented lateral candidates. It is not a coincidence that law firms tend to raise salaries *en masse*. They are competing with one another. Therefore, a firm that raises salaries conditionally (i.e., with an increased workload attached) isn't very competitive compared to the firm down the street.

It's not an unreasonable assumption to suspect that a firm will simply require more hours of its more highly paid lawyers, but the truth is that there are many factors that must be included in the calculus of how a firm adjusts its own internal economics. Certainly, those increases may be passed on to clients. Indeed, a law firm (like any other business) raises its rates from time to time to reflect changes in the marketplace and inflation, among other reasons. Remember too that the salary increases were largely among large national and international firms. While they are arguably the most visible employers in the marketplace, the trend was not universally followed by all firms. Smaller and more regional firms were less likely to follow the large firms' lead. This suggests that a firm with larger and wealthier corporate clients (as large firms tend to represent) are more likely to raise salaries, likely in part because their client base is not as rate sensitive as in a smaller firm. It may be, at a particular firm, that billing rates for first-year associates have gone up progressively, although the salaries were static during those years. There are some that would argue that the associate-salary raises are actually long overdue. Regardless of whether that is true, it is too simple to assume that the salary increases cannot or have not been absorbed by client billing rates. Even discussions regarding salary, hours worked, and client billing rates only scratch the surface. The economics of any one firm are as complicated as they are varied: Profitability is affected by many more dynamics than simply expenses related to associate salaries.

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Can We Learn from History?

Let's look first to the historical effect of salary increases on the law firm landscape. The most recent substantial market adjustment dates back to the last half of the 1990s, when the dot-com industry was reaching its peak and, in many cases, competing with law firms for talented lawyers. While this was certainly not the first substantial upward adjustment, it was a substantial adjustment at many firms in various cities. What does history tell us? Did associates sell their souls for the pay raises of the '90s?

As a junior associate in a law firm in the late 1990s, I was one of the fortunate ones to have my starting salary raised during the summer I was studying for the bar. Amidst what were commonly called the "salary wars" in my firm's city, my salary was raised again sometime after I had started work. As I alluded to before, the firm seemed to look more closely at those associates who were, for whatever reason, not nearly approaching a productive workload. I perceived less tolerance for a lack of productivity than I had previously seen, but there was certainly no more pressure for the already productive associates to bill more hours. The partners for whom I worked might tease me and my fellow associates about the windfall of our newly raised salaries, but I experienced nothing approaching pressure.

In my opinion, it is a mistake to confuse the good-natured ribbing of a partner who is paying his/her associate an unprecedented salary with a shift towards a sweatshop mentality. The "we had things harder in our days" mentality isn't specific to law firms or law firm partners, and associates can't be so sensitive as to internalize such comments when they are made. If an associate feels pressure to work hard for being paid at the top of the market, that's to be expected. While this pressure may reference the fatter paychecks, there is not likely to be substantially more or less pressure than already exists in a large law firm. In general, then, associates reaping the benefits of a salary increase should enjoy the spoils without too much concern and without having to kiss their private lives goodbye.

So the Sky isn't Falling? Whew!

None of this is to say that there aren't pitfalls when there are dramatic market adjustments. Ironically, one of the biggest hidden traps may affect the law firms themselves. One of the dynamics of increasing salary to attract talented lateral attorneys is the possibility of hiring lawyers who are only interested in short-term economic gain (as opposed to a long-term relationship with a law firm). In our experience, lawyers who have frequent moves from firm to firm make those lateral moves more often when associate salaries are on the rise. While it is certainly not

wrong to want to be paid at the top of the market, *associate candidates who disregard firm culture only to move to the highest bidder tend not to be long-term hires.*

Obviously, there are a number of stopgaps for making mistakes in hiring during an economic upswing. Thoughtful interviewing is certainly the first line of defense. The point is, however, that there are nuances far beyond associate workload to consider. Lawyers can get caught up in minor distinctions between compensation packages from firm to firm that seem important at the time, but rarely compensate for other considerations when taking a new job.

Firms are generally attuned to hiring the right cultural fit for them. While we have seen an increase in hiring, we have not seen a lowering of expectations or qualified candidates. We have not seen firms “settle” for the right candidate. As long as firms retain their hiring standards, they can prevent many hiring missteps.

Finally, however, there are larger dynamics at play that the legal community in general should consider in the wake of this latest round of salary increases.

The Sky is Blue, Right?

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I am constantly struck by how lawyers perceive themselves in the marketplace. I talk to lawyers with impeccable pedigrees who are honored to interview with a well-known firm and third-year law students who believe they are necessarily entitled to any associate position that interests them. To be sure, the marketplace is a demanding and complicated one, so there is no surprise that it is difficult to evaluate one's marketability. However, my concern is that there is not enough education among law students and those considering going to law school about what the market may bear.

It is worth reiterating: The firms that raise salaries are generally the large national and international firms. While these firms may employ 200 or 2,000 lawyers, they make up only a portion of the organizations that employ lawyers. Because many of these firms chose lawyers from the top law schools, there are many junior lawyers joining smaller firms, government agencies, or corporations. While the headline-grabbing firms are paying new lawyers as much as \$145,000, this is in no way representative of what the majority of employers pay. These jobs may very well be inaccessible for most law students and lawyers.

While we certainly encourage law firms to aggressively and competitively compensate their lawyers, it does create an added hurdle for those considering law school to properly evaluate the value of their law degree upon graduation. It is easier to take on six-figure debt if you believe that your earning potential is \$145,000 than if you anticipate earning half that amount. If you knew, however, that the average salary for entry-level lawyers in your city or state is \$70,000, your decision-making process may be quite different. The salary increases among the heavy hitters are dangerous only to the extent they obscure how law students perceive what they will necessarily get from the hiring marketplace, as opposed to what they might achieve, depending on law school performance. We speak to many young lawyers who are shocked and disappointed to find that they cannot get associate positions with big firms. Had they had this information earlier in their education, they may have been better off.

Moreover, it is increasingly difficult for smaller firms and government agencies to compete for the top-performing law students. Federal clerkships, prestigious one- or two-year positions with judges, demand high credentials and represent a feather in any lawyer's cap once on the resume. We wonder, though, whether a bright young lawyer will be compelled to accept a clerkship when the pay differential between it and a large law firm job is so great.

In conclusion, we suspect that the doomsday warnings of the evils of associate-salary increases are just a healthy dose of schadenfreude. The pressure on lawyers in large firms has always existed in some form or fashion, and it's unlikely that there will be a marked increase in billable hour requirements solely as a result of salary adjustments. Nonetheless, because the wage wars are among the highest-profile firms, and make headlines, the legal industry as a whole has an obligation to put them in context of the legal marketplace in general.