

The Great Resignation: Will It Drive a Stake In The Billable Hour?

By: FDCC Law Practice Management Vice-Chair Stephen Embry

Jessie Yount of law.com posted a fascinating article about why legal talent is still flocking to virtual law firms earlier this week. It was initially assumed that virtual firms' opportunity for remote work was the catalyst for their growth. But virtual firms remain attractive even though many traditional law firms have by now embraced, however reluctantly, remote work.

But there may be another reason as well, according to Yount: virtual law firms by and large don't mandate massive billable hour quotas. Virtual firms such as FisherBroyles generally are more flexible on billable hours and, in turn, compensation.

Says Yount, "It's hard for lawyers at firms to innovate and find better ways to deliver legal services if the same lawyers are spending 2,000 hours each year practicing law for the sake of meeting revenue targets." And that seems to be something many talented lawyers want to do.

My reading of Yount's post came on top of my recent discussion with Joey Seeber of Level Legal. We talked at some length about the opportunity and challenge of getting and retaining talent in light of the Great Resignation. The Great Resignation is a phrase coined by Management Professor Andrew Klotz. It refers to the recent phenomenon where many talented workers (including lawyers) are looking to change jobs and even careers.

Perhaps driven by Covid and, realization that our time is limited and work satisfaction has increased importance. As Klotz says, "a lot of people now realize I'm more than just my job." This realization is undoubtedly true for lawyers too long defined by and handcuffed to the billable hour and quotas.

Whatever the reason, many talented lawyers and other workers are leaving their jobs to find more fulfilling callings. Seeber thinks that law firms and other businesses will have to embrace remote work and new work processes to be competitive for this talent.

Seeber's views and Yount's article got me thinking. The forces driving the Great Resignation may very well drive demand by talented lawyers for reduced billable hour quotas and pressures. After all, as I have previously discussed, the billable hour not only limits innovation and efficiencies, it plays hell with any semblance of a sane life. This pressure to bill, bill, bill is particularly true when firms set billable annual hour quotas at or above 2000 hours. It's pretty hard to have time to do anything but bill time to meet those kinds of demands.

The result, as Yount noted, legal talent is now looking for places to work where the billable hour does not necessarily dominate culture.

But in many firms, revenue and profits come exclusively from billable hours. Reduce billable hour quotas, and profit takes an immediate hit. So as the talent wars heat up, firms face a difficult choice: reduce hours to attract talent and take a financial hit. Or maintain high quotas and attract and retain less talent.

But perhaps a third option may finally start to drive the proverbial stake in the heart of the billable hour model. Shift to a different business model. Begin to convert to flat fees in whole or in part of matters. Use subscription services where clients pay a flat fee for all services over a defined period. Look for other ways to produce revenue .

The result of moving to these models is that lawyers and firms can make more money by working more efficiently instead of making more money by simply working more. Those lawyers who can find faster, more innovative ways to get work done become more profitable.

And don't ignore the cultural change. Lawyers begin to look at how to do things differently. How to get matters handled better, cheaper, faster. I know. I served as national counsel for serial product litigation in the late 90s for a flat fee for two years. It was refreshing to be free of the billable hour. Once I started to look, I found all kinds of savings.

And rather than detrimentally impacting quality, the new model had the opposite effect. Freed of the billable hour, I figured out a way to resolve cases more quickly for less time and money. Better for the client. Better for me.

The bottom line: the Great Resignation may force more forward looking firms to reduce billable hour demands to attract better talent. Reducing quotas will force firms to find different business models to handle matters. These models will spur more innovation and efficiency. The law of supply and demand brings about change.

Given the ability of the profession to resist change even in the face of all logic and reality, maybe not. Never underestimate legal inertia.