First Competencies, *Then* Merit

By Susan G. Manch

If you are reading the legal press these days (and frankly, who isn't?), you are likely to hear pundits opine that law firms must switch to merit-based compensation in order to maintain profitability. If we were back in the boom times—the days of firm concierges and summer booze cruises—these would be fighting words. Before the massive layoffs that accompanied the arrival of 2009, the sacrosanct nature of lockstep associate pay was such that a firm's public support for even the *idea* of applying objective standards to associate compensation would ruin their recruiting chances on any top law school campus, and would indeed have earned them the dreaded "TTT" moniker on the blogs (third-tier toilet, for non-bloggers).

What a difference a year makes. Today the few firms that already employ a merit-based approach tout their foresight publicly, when only a year ago they would have gone to great lengths to describe their pay approach to recruits as "substantially like lockstep". Now we hear about transitions to a merit-based approach described as not only inevitable, but as if firms could wave a wand and make it happen overnight.

But of course that is a fantasy. Merit compensation sounds great—like a simple, common sense approach. Who wouldn't agree that a compensation system designed to give the most to those who are the best and the least to those who are the worst is fundamentally more effective? It appears simple on the surface, but in reality is not at all simple in execution for most law firms. The complexity begins with how one decides who is "best" and who is "worst". In a merit-based approach to non-partner compensation, firms have to employ some form of assessment that helps them differentiate among associates to award differing levels of compensation, just as many firms now award different bonus levels. Most merit-based bonus system rely on hours to separate the top performers from others, but hours are less useful when it comes to creating differentials in base compensation. Firm performance appraisal systems are typically the primary tools available to make the "best" and "worst" assessments. It becomes clear fairly quickly that in order to make a shift from lockstep to variable compensation firms will need to depend heavily on their evaluation process to provide the basis on which compensation assignments will be made. In order for non-partners to trust that these compensation decisions are made fairly and using accurate information, the performance assessment process must be an effective and consistent one.

Unfortunately, evaluations are a weak spot for many law firms. In a typical law firm evaluation system, a standard set of performance criteria are measured in annual evaluations each year. Partners dutifully (or not) rate associates on, for example, a 5-point scale, rating Tom as a "2" on writing skills and Anne as a "1.5". And in that incremental difference we have the crux of the problem—each partner has his or her own subjective opinions about what each of these ratings means, regardless of explanations that accompany the evaluation forms. What were the actual, identifiable (and yes, defensible) differences observed in Tom and Anne's writing skills? In most firms, associates in different practices and offices, with varying demands on their writing abilities, at differing levels of seniority, and with wide variations in experience have their performance quality on this factor rated using the same scale. Imagine taking the assessment of Ann and Tom a step further and trying to assign a monetary value to that 1.5 and 2 rating.

This subjective assessment approach, similar to that used in the majority of firms, would be fine if all associates did the same work for the same supervisors—but of course they do not. Perhaps even this issue could be overcome if performance expectations were clear and feedback on progress was frequent, candid, and specific. Alas, since associates have no job descriptions, expectations are a bit fuzzy. Since feedback from partners is almost non-existent, progress in meeting even fuzzy expectations remains a mystery for most. Add to these concerns the fact that most partners evaluate associates anonymously and it becomes clear that in most firms, associates lack even the most basic understanding of how the firm views their performance in relation to the performance of peers. Most partners will admit their firms' performance appraisal processes and outcomes are ineffective in actually measuring associate performance with any degree of consistency.

To sum up so far, ineffective evaluations do not make a strong foundation for the introduction of merit-based compensation systems because the essential information gathering tool is absent. The variation in a firm's success in moving to merit can usually be tracked to the effectiveness or ineffectiveness of their evaluation system. Some firms have found the merit approach highly motivates their associates and supports profitability by rewarding those who work harder and produce higher quality work. It allows associates to chart specific performance goals and be rewarded for attaining them. Others deem their experimentation with a merit-based system as a colossal waste of time—pointing to numerous situations in which partners

argue for hours over adding/ subtracting $5000 from a lawyer's six-figure pay in a dance that recurs each year. The one factor that separates the firms that find real benefit in a merit-based approach from those that don't: whether the firm has put into place a fully integrated, competency-based approach to performance management.

Most of the firms successfully employing a merit-based approach have done the hard work of building an effective developmental framework on which all performance management is based. The framework describes consistent standards of performance, measures the extent to which standards are met, and offers the basis for differentiating one associate's performance from that of another. Competency-based performance management systems are the leading edge. Still fairly new to the law firm world, competency-based performance management is the standard in most corporate and consulting environments. The best competency models in law firms are based on core competencies developed based on characteristics common among the firm's most successful lawyers and are tailored to reflect the appropriate hallmarks of excellence at each level of experience. A first-years' and an eighth-years' performance are not measured against the same standards. In a high functioning competency model, a pathway to excellence is made clear—as mastery of each level's performance standards prepares the associate to meet objectives in the next level and failure to attain mastery requires more time at that level. For an effective transition from lockstep firms must have in place tools that allow for a regular, objective assessment of individual progress and contribution. A competency-based approach to performance management allows for this and also creates a framework the firm can use to guide recruitment, training and development planning, and advancement and outplacement decisions in addition to compensation.

Recognizing and rewarding individual effort enhances motivation by allowing achievement-oriented individuals to understand what the firm values—and expects—by seeing what is rewarded. Most associates, though seemingly attached to the lockstep approach for obvious reasons, are desperate to know where they stand in the eyes of the partners (perhaps more so today than at any time in history). It can be highly motivating for associates to have a clear outline of well-communicated firm expectations and standards against which to measure their performance. With this kind of model, not only do associates know what the firm wants, but they also know that supervising lawyers have a set of consistent performance standards guiding all evaluations. An individual's motivation to achieve is directly related to and affected by both his/her *desire* to succeed and his/her *expectancy* of

success. Approaches with clearly delineated core competencies provide a direct reward for success that builds an individual’s desire to achieve. And clear expectations and fairly applied standards make associates feel as though they have a better chance for success. That said, associates’ willingness to accept a merit-based approach will be dependent on the level of trust they have in the system’s fairness.

To achieve the maximum benefit from a merit-based approach, firms must commit to the hard work of earning associates’ trust by putting in place clear expectations and a transparent process for measuring the extent to which they are met. Moving to a merit-based approach without establishing this foundation could cost firms far more than they will ever save.