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# LAW FIRM MANAGEMENT

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# Keeping current with worker classification

## DOL'S RULES ON CONTRACTORS

Last year, the U.S. Department of Labor (DOL) issued a new final rule on classifying workers as employees or independent contractors under the federal Fair Labor Standards Act (FLSA). Threats of lawsuits soon followed. While those cases have been winding their way through the courts, though, the rule took effect in March 2024.

Law firms that rely on the services of contractors should be familiar with the rule, which differs significantly from the prior rule. In particular, the latest standard is more employee-friendly than the former test.

### PREVIOUS TEST

The 2021 Independent Contractor Rule focused on whether, as an “economic reality,” the worker is dependent on the employer for work or is in business for themselves. It weighed five factors, in contrast to courts and the DOL, which historically applied five or more overlapping factors in a “totality of the circumstances” test to assess the economic reality.

*An indefinite, continuous or exclusive work relationship suggests employee status.*

Under the 2021 rule, no single factor was controlling. But the rule identified the following “core factors” that were considered the most relevant:

- The nature and degree of the employer’s control over the work, and
- The worker’s opportunity for profit and loss.

If both factors weighed in favor of the same classification, it was deemed substantially likely that the classification was correct.

### CURRENT RULE

The final rule identifies six factors to guide DOL analysis of whether a worker is an employee under the FLSA:

- 1. The worker’s opportunity for profit or loss depending on managerial skill.** The lack of such opportunity suggests employee status.
- 2. Investments by the worker and the potential employer.** If the worker makes similar types of investments as the employer, even on a smaller scale, it suggests independent contractor status.
- 3. The degree of permanence of the work relationship.** An indefinite, continuous or exclusive relationship suggests employee status.
- 4. The employer’s nature and degree of control, whether or not control is exercised.** Control over the performance of the work and the relationship’s economic aspects suggests employee status.
- 5. The extent to which the work performed is an integral part of the employer’s business.** If the work is critical, necessary or central to the principal business, the worker is likely an employee.

- 6. The worker’s skill and initiative.** If the worker brings specialized skills *and* uses them in connection with business-like initiative, the worker is likely an independent contractor.

All factors will be weighed — no single factor or set of factors automatically determines a worker’s status. According to the DOL, additional factors may be relevant if they “in some way indicate whether the worker is in business for themselves.” The DOL says this approach continues the idea that a worker isn’t an independent contractor if, as a matter of economic

## WHAT ABOUT LEGISLATIVE CHALLENGES?

A Congressional Research Service report noted Republican attempts to block the current independent contractor rule through joint resolutions providing for congressional disapproval under the Congressional Review Act. If these resolutions pass, the rule will be invalidated, and a similar rule can't be reissued without congressional authorization.

If the joint resolutions fail, Congress members who oppose the rule's multifactor analysis may attempt to amend the Fair Labor Standards Act's (FLSA) definition of "employee" or prescribe an explicit standard for determining employee status. Two lawmakers have introduced a bill to amend the FLSA, classifying workers as independent contractors if employers lack "significant control" and workers face entrepreneurial opportunities and risks in their roles. It remains to be seen whether the new administration will make changes to the rule and if such efforts will be successful.

reality, the individual is economically dependent on the employer for work.

The final rule notes that a lack of permanence in a work relationship can sometimes be due to operational characteristics specific to certain industries or types of work. The relevant question is whether this lack of permanence results from workers exercising their own independent business initiative, which suggests independent contractor status. Seasonal or temporary work alone doesn't necessarily indicate independent contractor classification.

The return, and clarification, of the factor related to whether the work is integral to the business also is worth highlighting. The 2021 rule included a noncore factor that inquired only whether the work was part of an integrated unit of production. The current test asks whether the worker's business function is an integral part of the business.

### A COSTLY MISSTEP

Employers that are found by the DOL to have misclassified an employee can end up on the hook for back pay, withheld employee benefits and penalties. They also may become subject to a variety of federal and state employment laws whose applicability turns on the number of employees. When in doubt, it's best to err on the side of caution. •



# 6 tips to improve cash flow management

Profitability often gets the spotlight when it comes to a law firm's financial health, but cash flow management is also crucial. You can increase the odds that your firm won't come up short on cash needed to sustain daily operations by following the steps below.

## 1. IDENTIFY BLOCKAGES

Many firms benefit from auditing their entire billing system, start to finish. The scrutiny often will uncover specific areas that consistently create hurdles.

This issue may be a certain step in the billing process, such as time entry, or a particular department that tends to slow things down. You might identify individual clients that routinely delay payment, or you could find you're not following up promptly when payments are late. Whatever the blockage, you can't tackle the problem until you identify it.

## 2. PREPARE CASH FLOW FORECASTS

Forecasting your cash inflows and outflows allows you to pinpoint looming cash shortages and surpluses so you can plan ahead. For a law firm, forecasting should take into account factors such as utilization (billable hours) and collection rates by attorney, seasonal trends, and work in progress.

It's critical that you engage in forecasting on an ongoing basis, though, rather than just annually. Some law firms forecast quarterly or monthly, while others develop rolling 13-week forecasts. The greater the frequency, the more time you have to adjust to rapidly evolving changes.

## 3. MONITOR CASH FLOW STATEMENTS

Your firm should prepare cash flow statements that show the sources of cash inflows and outflows, as well as the net change. A cash flow statement generally reflects your daily operations,



capital investments, and any financing that provides or requires cash.

Balance sheets and income statements are important, but cash flow statements present a more accurate snapshot of a firm's current financial position. An income statement, for example, could show your firm is profitable even while you're going through a risky cash crunch.

## 4. PREEMPT POTENTIAL PAYMENT DELAYS UP FRONT

Don't wait until a client misses their due date to learn they don't understand your fee structure or billing policies. Address these clearly early on, including any potential fees for "extra services," frequency of billing, net payment terms (consider 15 days rather than the traditional 30) and late penalties. To avoid the negative connotations of the latter, offer an early-bird discount that basically operates as a back-door late fee.

You also may want to conduct credit checks on new clients. You don't necessarily need to do a full credit check, but the firm should have some evidence that a client can pay its bills. The information will also be useful when setting credit terms.

## 5. REGULARLY REVIEW VENDOR RELATIONSHIPS

Don't assume that you're getting the best possible deal from vendors or suppliers. Take

the time to shop around for phone, internet and similar services.

With providers that you want to continue working with, check if they're open to negotiation on your current arrangement. Perhaps you could secure longer payment terms or fixed fees. A provider also might be willing to provide a volume discount if you consolidate multiple services with it.

## 6. KEEP COST CONTROL FRONT-OF-MIND

Cost control obviously becomes paramount during a business downturn or, say, a pandemic. Savvy law firms, however, regularly evaluate their costs, in both good times and bad — so they

don't end up scrambling when the belt needs to be tightened.

At worst, you might find some subscriptions you don't use or marketing costs that are no longer worthwhile or appropriate. At best, you get a handle on which costs are discretionary and which are essential, so you know where to turn first when you need to trim expenses.

## CASH IS KING

Your plate's probably already full, without adding new financial and accounting responsibilities. We can help you identify blockages, stay on top of your cash flow statements and forecasts, and more. •

# Reap the rewards of part-time partnerships

**Does your law firm have part-time employees who have earned a partner-level position at your firm, but are unable or unwilling to commit to a traditional, full-time ownership role? Or do you have full-time partners nearing retirement who want to reduce their involvement in the firm's operations? The part-time option may boost your attorneys' morale, leading to higher productivity.**

## MAKING IT WORK

If your firm is considering — or has already implemented — a part-time partnership track, don't just "set it and forget it." A concerted effort will be needed to ensure its success, starting with a full buy-in from management.

Reducing a partner's workload for a specific, temporary reason (such as for medical or family leave) differs greatly from the type of permanent cultural and policy change needed for part-time partners. The key lies in your firm's culture.

Don't just pay lip service to a flexible work environment. You must treat part-time partners the same as everyone else.

Your firm should, for example, assign part-time partners to key accounts and encourage them to assume active roles in firm committees and professional associations. And be sure to schedule routine partner meetings as well as firm and client events to facilitate their attendance.

To help ease the process, you might create a position to oversee alternative partnership tracks and function as a liaison between part-time partners and managers. Doing so can give part-timers a forum to discuss workload balance and other concerns.

## SETTING GUIDELINES

It's important to understand that client demands will put pressure on both your firm and its part-time partners. After all, clients will need assistance during a part-time lawyer's off hours. One of the first orders of business when designing a part-time



partnership track is to create guidelines for such situations and provide part-time partners with back-up lawyers for emergencies.

To make your part-time partnership program a success, management must fully embrace the concept and formalize the terms and responsibilities. Your firm's policy, for example, should spell out a partner's minimum work hours and his or her schedule. If you're unsure about how the arrangement will work, include a probationary period that allows either the partner or your firm to terminate the arrangement. Setting goals is also important. Address the number of hours part-time partners need to bill each year, as well as the amount of time they're expected to spend on marketing, firm administration and legal education.

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Compensating part-time partners should be no more difficult than compensating full-timers. For example, you should evaluate their performance and link their continued employment, compensation and rewards to how well they achieve their stated goals.

## EXPANDING FLEXIBILITY

Part-time partnerships aren't the only arrangement that can benefit law firms. To support and motivate your lawyers to deliver their best client work, consider embracing broader schedule flexibility.

Other options include:

- Flextime (altering starting and ending times of the workday),
- Compressed workweeks (working the traditional number of hours in less than five days),
- Telecommuting,
- Seasonal employment, and
- Sabbaticals.

Your human resources (HR) department will be an invaluable resource to make these options a reality. If your firm lacks an in-house HR department, consider hiring a freelance HR specialist or law firm consultant to develop a program that benefits both your partners and the firm.

## ACHIEVING RESULTS

As firms look for ways to attract and retain talent, this flexible option may be a good option to consider. A part-time partnership track can provide partners with the flexibility they need so they can stay with your firm, while also achieving their desired work-life balance and producing their best client work. Happy attorneys lead to greater client satisfaction. •

# Time to check in on your attorneys' financial wellness?

Financial concerns can have an impact on an attorney's job performance. Stress is well known to affect everything from sleep to decision making. Working in the legal industry tends to be stressful as it is, without the compounded stress from financial problems. Helping your attorneys navigate their finances is a step in the right direction.

## BY THE NUMBERS

A 2024 American Bar Association (ABA) survey of members under age 36 found that 85% of respondents borrowed to fund their education. About two-thirds of all respondents reported high or overwhelming stress over finances in general. Roughly half — including those who didn't borrow or reported no student debt at graduation — said they sometimes or always worry about meeting monthly living expenses.

A majority of those with debt over \$100,000 agreed that their loan obligation has caused them to feel depressed or hopeless. That's not surprising. Mountains of debt — whether from student loans, mortgages or otherwise — can make it seem impossible to save for other goals, like retirement and children's education.



J.P. Morgan Asset Management and the Employee Benefit Research Institute released a study in 2024 showing how student debt impacts 401(k) contribution rates and the resulting plan balances. Unsurprisingly, the study shows that making student loan payments significantly reduced employees' level of contributions. And attorneys tend to retire later in life than their contemporaries in other fields, which sometimes means that they don't start thinking about retirement planning as early as they should.

## HOW TO HELP

For some respondents to the ABA survey, answering these questions might have been the first time they've been so forthright about their financial wellness-related fears. Attorneys often are reluctant to discuss such thoughts because they're embarrassed or feel like failures. Keeping these thoughts to themselves can not only damage their emotional — and even physical — health, but also prevent them from seeking assistance.

A quarter of respondents reported meeting with a financial advisor, while over half accessed financial advice online. Law firms can help by providing financial wellness employee benefits, such as counseling that helps attorneys maximize the benefits of a retirement plan. Firms also can provide expert-led workshops on topics that include budgeting, investing and managing debt, or they can bring in third-party financial planning services.

## EVERYONE BENEFITS

Law firms that heed and respond to the worries of their employees can gain valuable competitive advantages. Providing financial wellness benefits can help your firm recruit and retain attorneys, while also reducing the risk of financial-related distractions leading to mistakes on the job. •



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