Low Return

Financial incentives are The Am Law 200's favorite motivational tools, but their value is limited, and they carry risks.

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Reprinted with permission of The American Lawyer, November 01, 2011

Every year, firm leaders devote vast energy to pursuing the perfect blend of financial incentives to influence attorney behavior. Their quest is premised on deeply held assumptions about the motivational power of money and a belief that if management can just get the compensation scheme right, attorneys will adjust their actions.

Money does motivate us. Professionals need to feel that their compensation is commensurate with their contributions and in line with what their peers earn. Financial rewards can be one way to express appreciation and acknowledge a job well done, but it is not the only way. The fact is that the more a firm uses money as a motivator, the more likely it is to suffer negative effects.

In fact, obsessing about money and regarding it as the primary way to manage partners may well be the most common way that firms expose themselves to dire unintended consequences. There is ample evidence that the relationship between compensation and behavior is far more complicated than a carrot-and-stick approach suggests.

Years ago, the human resources consulting firm Watson Wyatt (now Towers Watson) conducted a survey of 1,700 employees who had been identified as high performers by their companies. They found that top performers rated "a desire to maintain a positive reputation" as the most important factor in their personal motivation. (Most attorneys, by the way, give the same answer when they are surveyed.) These top performers then ranked "being appreciated" as the second most important factor, "belief that the work is important" third, and "interesting assignments" fourth. "Expecting a significant financial reward" was ranked ninth—out of ten items.

If people really do have a need to be appreciated (remember, it ranked second), then that should influence their motivation. So imagine if someone were to say, "I'll praise you if you do such-and-such." That's more of an insult than a motivator. And yet, that is how we use money at big firms. We think nothing of saying, "I'll pay you more [the ninth most important motivator] if you do such-and-such."

If your firm suddenly adopted a pure lockstep compensation system, how many of your partners would not work as hard? When we've posed that question, respondents say that most of their partners would slack off. But when we ask those same partners how shifting the compensation scheme would affect their own behavior, they quickly say that it would have no effect.

The following are some of the unintended consequences of relying too much on financial incentives to change lawyer behavior:

• Compensation can alter priorities.

Consider this scenario: Confronting a serious claim that is career-threatening, you have a choice between two lawyers. One entered law school to make as much money as fast as he could. The other entered law school because she enjoyed the intellectual challenge and wanted to serve people. Who would you choose?

While firms put plenty of energy into financial metrics like revenue per lawyer and profits per partner, metrics associated with lawyer efficiency, quality of work, client satisfaction, and suitability of results are completely lacking at most firms. But aren't they the elements that most accurately measure the long-term worth of a firm's client relationships—the true asset that the firm possesses? Does your firm reward your lawyers for those elements? Does it even have the proper tools to measure them? Probably not: Firms wave off these metrics as irrelevant because they assume that all work is done to the highest professional standards, with an inherent commitment to getting the best results.

It's very easy to tell if someone has a true passion for what they do or is motivated primarily by a fee, and once you have ascertained that someone falls into the latter category, there is no way you would want to hire that person. Yet money is the tool of choice for firms that are trying to motivate their professionals to achieve higher levels of performance.

Paying professionals to behave in a specific manner can undermine their core motivation and cause them to do things they otherwise wouldn't consider. When carried to extremes, it conflicts with the fundamental duty of a lawyer to only charge a fair fee for work performed, which should also mean only work that is necessary.

• Compensation doesn't guarantee results.

Financial incentives presume that lawyers who try harder will attain better results. But throwing money at a problem does not affect an individual's abilities. Suppose you want partners to do more cross-selling. You introduce incentives for those who do. The incentives may get some lawyers to try harder, but it won't achieve results if the lawyers are not sufficiently trained in cross-selling or don't know what their fellow partners do and how it can bring value to their clients.

The result can be a targeted financial incentive that frustrates performance and undermines morale. People work harder but fail to achieve the desired results, so they give up when they see their effort is not rewarded with money (or with too little money to justify their effort). And if this financial incentive is in conflict with others (for example, if the cross-selling incentive conflicts with incentives to maximize hours and rates individually), then the incentive that promises the higher reward is the one that will be embraced. An important objective will be lost because management assumed that all it had to do was provide a financial incentive.

• Compensation doesn't necessarily make us work smarter.

Here is a thought exercise: You have two partners with different practices; your job is to evaluate their performance and determine their compensation.

Gina works in the health care practice and has identified a new niche at the intersection of microbiology and stem cell research that has tremendous growth potential. She pursues it aggressively, but right now, much of her time is nonbillable. Her billable hours this year will be about 1,400 hours. George works in the labor and employment practice; his billable rate and collections are about the same as Gina's, but he'll bill about 2,200 hours. Which of these partners is more valuable to the firm? Who should be paid more?

Most firms put the risk of an endeavor like Gina's squarely on her shoulders. Because her billables are low, they would severely cut her compensation and might put her partnership status at risk. There are three potential outcomes, each negative for the firm. Gina might decide not to pursue the opportunity and therefore fail to reach her long-term potential as a higher-performing partner. She might take the risk, fail, and be asked to leave. Or she might take the risk, succeed, and then—armed with her enhanced business profile—make a lateral move to a higher-paying firm.

Should firms that say they hire only the best and the brightest, and then base their future on the performance of its partners, can really be run according to the hours/rate/production formula? Can there be any greater obscenity than to have great reservoirs of unrealized potential in the talent base, but to affirmatively suppress it through such a compensation scheme?

• Compensation can stifle collaboration.

Firms do a great job of preaching the importance of cooperative effort, teamwork, and practice group collaboration, only to reward what is primarily individual performance. So why should lawyers contribute to any group that they belong to? The result is practice group meetings where partners waste time talking about what they have each been working on and filling in the marketing department's silly personal business plan templates but do little to engage in meaningful group activities to build their collective practices.

Money can motivate self-interest and reward partners for working alone in serving clients. It can foster a go-it-alone attitude that diminishes income to the firm while increasing lateral portability. This "silo" approach exposes the firm to greater risk of being held hostage to demands for greater compensation from dissatisfied high-performing partners.

• When people come for compensation, they will leave for compensation.

We've all seen the seal act at the zoo. Zookeepers enter the seal area carrying bags of fish and create a spectacle by dropping fish into the mouths of performing seals that do their bit to keep the supply of fresh food coming. Reward the desired behavior, and the tricks keep coming. But when the fish disappear, so do the tricks. Rewards may increase the likelihood of eliciting certain behavior, but only so long as the rewards keep coming.

Such is the case with buying talent for the highest dollar in a market where professionals search out the most lucrative offerings and then move for higher compensation. Unless you can keep those rewards coming, you might learn—as plenty of other now-defunct firms have—that it can become an unsustainable business practice.

• Compensation can destroy cultural priorities.

Often, social norms can influence behavior much more strongly than financial considerations, as shown by a study of a day care center in Haifa conducted about ten years ago. The center had no penalty for parents who were late to pick up their children, but parents were rarely late. When the center's management introduced a fine for late pickups, tardiness actually increased. Even when management withdrew the fine, the tardiness continued. Once money was introduced, what had once been a social obligation or element of culture was abandoned irrevocably.

We're reminded of a firm that introduced a perk to motivate a couple of partners who seldom completed their client billings on time. Management offered those partners hands-on assistance from an administrative staffer. The result: no change in the behavior of the tardy partners—but a half-dozen other partners now demanded the same treatment. When we care about people, it seems, we care less about money, but once we are taught to monetize cultural commitments, we have great difficulty in reestablishing the primacy of culture over money, even when the monetary component was relatively in-consequential.

• Satisfaction with compensation is -often short-lived.

Money can be addictive—the more we have, the more we think we need. We adapt far too quickly to increases in compensation. When I receive an increase in pay or a bonus, I soon come to view it as part of my total compensation, and it serves as the baseline for what I expect to exceed in the coming year.

This is especially true when "being appreciated" and other elements of importance to high-performing lawyers are reduced to being measured by money. Managing partners already have growing numbers of very highly compensated partners who are perpetually dissatisfied with their compensation, even though it is clearly fair, or even more than fair, when viewed in the context of the firm. Their high pay leaves other partners suspicious that the system is increasingly skewed unfairly toward the high-performing partners class.

The biggest problem with financial incentives is that they are overused. Firm leaders too often resort to monetary remedies instead of investing time in one-on-one coaching, mentoring, and managing. In an earlier era dominated by lockstep compensation, management dealt with underperforming partners by discreetly visiting them and helping them get back on track. Today, management abdicates that responsibility by simply lowering the partner's compensation.

So if money isn't the complete answer, what is the best means to motivate people? That may seem like the natural question. But we think the more enlightened question is: How can we create the conditions in which our lawyers will motivate themselves?

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