Deciding To Downsize

QUESTION:

Over the past three months we have responded to this economic downturn by taking action on our collections, ratcheting-up our marketing efforts, and shifting various of our under-employed attorneys to different practice areas. Nevertheless by the end of May, with billings down dramatically and our juniors costing us $160,000 in salaries alone, we have decided that we cannot passively ride out these difficulties and need to make some hard decisions. Therefore, later in June, we will be quietly de-equitizing some of our underproductive partners and reluctantly announcing layoffs, of both associates and staff. We are a firm that has never had to take this kind of painful action in the past, and I fully expect it to take its toll on firm morale and productivity. How can I help people adjust to these new realities and get things back on track?

RESPONSE:

You are not the first law firm to got through this and you certainly won't be the last; but let us suggest that you pause for just a moment . . .

BEFORE YOU PROCEED TO DOWNSIZE

Firstly with respect to your **associates**. We are obviously not sure how many associates may be involved, but many firms facing hard times have found that by accelerating performance reviews, shortening transition periods, and substituting outplacement services in appropriate circumstances, they have been able to manage associate headcount without having to initiate layoffs. It may cost a little more to do it that way, but it avoids being trashed in the blogs, which hurts morale and future recruiting, avoids the "am I next" issues in the associate ranks and accelerating a view that since the firm has no loyalty, neither should they, and avoids making possible lifetime enemies among lawyers who may eventually end up in-house at some distinguished corporation. If you look at your annual attrition, in any substantial firm you will see that it is a significant number of lawyers so shrinking your associate ranks can be more a matter of timing - i.e., inevitably a fair number of associates will leave in any event. If you can accelerate the timing you can avoid a "layoff" environment. Controlling hiring is the other side of this equation – thus, reducing your lateral hiring at the same time is essential. The bottom line is that layoffs should only be undertaken as an absolute last resort.

Dealing with downsizing **partners** is more complex issue. De-equitization may be somewhat controversial, but it is a fact of life in the market these days. The arguments against it are, having a disappointed and demoralized partner around the firm to fester is not helpful, and some salaried partners are too expensive for the work they are doing and therefore unprofitable or not sufficiently profitable even in that status. The arguments for it are: it better suits role players; it is a more "honest " recognition of contributions; it allows retention of talented lawyers who are integrated into important client relationships, etc. In any event a lot of firms are doing it, so someone must think it works. What it does not do, in and of itself, is make your firm more profitable. It may facilitate reallocation of income but that is in fact a separate undertaking. A recession may provide a catalyst for a de-equitization program but justifying the program on a single event (such as an economic downturn), unless the firm is in extreme circumstances, sends a message to the partnership that may not be helpful. Most firms encourage partners to take an ownership interest and expect them to roll with the ups and downs. Most firms look at performance over the medium term at least and in a subjective way. Tying status changes to short term economic events sends a different message.

Finally, like associates, **staff** attrition can be managed less drastically by cutting off new hires, re-assigning staff and accelerating performance reviews. Having looked at that, the number of pure 'layoffs' needed may not be as great as anticipated and may not justify a public program.

IF YOU MUST PROCEED WITH DOWNSIZING

If drastic action is required for the financial health of your firm and you are absolutely going to have to downsize, you must assume that it will become public either externally or internally, or both, and be prepared. It will be very difficult to do it quietly. You should have a detailed plan to execute the layoffs or de-equitization, and to manage the internal and external public relations.

You should have core group of people who are seen to represent the firm's leadership "center, " who understand what your firm is going through and why, and who are going to hang together through these rough seas. Ensuring that you have cultivated that core group is critical to proceeding with any action.

You need to be very candid with your partners and employees. If yours is a fairly transparent firm culture, you need to hold meetings with your people and share the pain. It doesn't mean that they will feel any better, but they will at least know what is motivating such drastic action.

It is also a good idea to get it over with as quickly as possible. Don't let it drag on and suffer death by a thousand lashes or you will risk losing some of your best talent to more stable environs.

The question is then, how best to do it.

In terms of process, you need to inform people personally. Some senior officer (yourself as Managing Partner, your Personnel Director, a Practice Group Leader, etc.) should meet with each individual, preferably in or near their own office or work place (it's less intimidating). In all instances, individuals who are being laid off or chose to resign should be offered professional transition assistance and given a generous severance package (including extended health care). While these severance packages may prove costly, we believe that it is both financially smart and will save a lot of pain and suffering.

In the case of de-equalized partners, one approach that may work well is to offer the partner the option to resign, with generous severance. In this way the partner can market himself or herself as an equity partner. Depending upon your culture, you may also wish to offer this partner certain office conveniences to facilitate their transition, such as office space, use of a secretary, computer, etc. Caution needs to be exercised in this regard, however, as it may be disruptive to have disgruntled former equity partners around the office for any length of time. Anyone who feels unjustly treated may attempt to turn other partners against the firm.

Downsizing is a very emotional experience for *everyone* involved. In the case of partners who have been de-equitized, the action raises the performance bar for those remaining partners, some of who can be expected to now feel threatened by their level of performance. Meanwhile, some believe that those associates and employees who are not laid-off will feel relieved, perhaps even grateful to still have their jobs. This might be true in some cases, however, where cutbacks result in long term working relationships being severed, something quite different occurs. People go into shock. They experience a deep sense of personal loss at seeing friends leaving or positions eliminated. It feels very much like a death in the family and needs the compassion and time for mourning that we might expect whenever a loved one is lost. Strange as it seem, those who survive the downsizing process may suffer as much as those who don't!

Many survivors freeze like a "deer in the headlights." Their familiar patterns are disrupted and the momentum that comes from comfortable daily routines will take time to recover. Not knowing what to do, people wait to see what happens. They wait for leadership; for someone to tell them what to do now. You need to display compassion for the human need to cope with the shock and fear that people feel, combined with a sense of optimism, direction and mission that will help them through the often painful transition from any layoffs. It is reasonable and proper to mourn for the loss, but eventually it is necessary to move on. As managing partner, your role is to address the emotional and practical fallout so the firm can constructively move forward.

Here are some points to consider:

• Your decisions as to who will be downsized / de-equitized should be made quickly (because the plan is sure to leak out) and then implemented within a few days. If at all possible, "cut once and cut deep". Avoid any lingering sense that “this may be just the start.”

Be painfully honest about your firm’s realities and your future expectations. Don't say "the worst is behind us” or “there will be no further layoffs” unless you are absolutely sure that is the case. If your people begin to relax their guard only to get more shocking news, they will be much slower to trust any of your future statements.

• Communicate, communicate, and then communicate some more. Having a communications effort that talks about pulling together through the transitional hard times, activities to keep building the business, plans for the future and positive developments will help move people past the event.

When things seem to be coming apart, the normal communication links break down just as suspicion and mistrust begin to predominate. If people don't hear anything, they fear the worst or they begin to make up things and the rumor-mill takes over. Be sure to quickly dispel any rumors that are not true. Bore your people to tears with as much detail, as often as possible.

• Try to exude optimism. Don't deny the trauma and pain that is occurring, but find the bright spots and emphasize those rather than dwelling on the loses. Minimize criticism and fault-finding. Celebrate every success, no matter how minor.

Create a sense that "we are all in this together and need each other to make it." Acknowledge that everyone's contribution is essential and their input is valued. Do everything you can to build teamwork.

• Develop a sense for the firm's future that draws people together. Specifics can be developed as you go along, but it is essential that people have a clear and understandable picture of where the firm is going. It is also important that they see something in it for themselves. Provide clear reasons to be excited about your firm's future.

• Invest some time and effort with individual partners in coaching and encouraging them to work on building and marketing their skills.

In summary, if you absolutely must downsize try to do it once, do it quickly, and with abundant sensitivity (no pink slips) and generosity.

The LAB was formed as a resource to provide pragmatic advice to assist new managing partners with their critical burning issues and help them succeed. **The LAB** is comprised of the following distinguished current and former law firm leaders: Angelo Arcadipane (Dickstein Shapiro LLP); John Bouma (Snell & Wilmer LLP); Brian K. Burke (Baker & Daniels LLP); Ben F. Johnson, III (Alston & Bird LLP); John R. Sapp (Michael Best & Friedrich LLP); Keith B. Simmons (Bass Berry & Sims PLC); William J. Strickland (McGuire Woods LLP); Harry P. Trueheart, III (Nixon Peabody LLP); together with Patrick J. McKenna (Edge International).