

FROM THE OUTSIDE IN: BEST PRACTICES FOR BRINGING MORE WORK IN-HOUSE



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The numbers have been crunched, the business case has been made, and the green light has been given: the legal department has decided to redirect more work in-house and rely less on outside counsel. When the economy crashed in 2008, it became imperative for legal departments to find ways to reduce external spend and stretch existing resources; “in-sourcing” more work became another means to achieve cost savings and efficiency gains. The first of this two-part series provided some initial questions legal departments should ask themselves to streamline the process of redirecting more work in-house. This installment provides examples of best practices to consider as the department takes on additional legal work and shares responses to some anticipated challenges departments may face as they transition.

BEST PRACTICE: PROVIDE TECHNOLOGY AND TOOLS TO STRETCH PRODUCTIVITY OF CURRENT STAFF

When hiring is neither necessary nor possible, legal departments can successfully bring more work in-house by effectively using technology and tools that make their attorneys, as well as support staff, more efficient. Lawyers with increased workloads should not have to conduct new research to respond to routine legal inquiries or reinvent the wheel every time a new agreement must be drafted; having the right tools available is imperative. The following are examples of tools you can use to increase the efficiency of your legal department.

Playbooks & Checklists. A playbook can detail the company’s strategies and position on different issues that arise during the course of business; instead of conducting original research on routine issues or drafting clauses from scratch, attorneys can quickly find memorialized written guidance and suggested language for a variety of issues and challenges.

The legal department may develop a playbook in connection with the company’s standard form of sales agreement. From the legal department’s perspective, some of the agreement’s clauses may be negotiable on a case-by-case basis, while others have historically been non-negotiable. A playbook of this standard agreement will detail the guidelines attorneys should follow, including clauses and issues that are subject to compromise, as well as what attorneys may agree upon during negotiations. For example, a playbook can detail the company’s stance on its choice of venue clause. Is choice of venue critical to the company? Are there a handful of alternative forums the company would consider as a compromise? A playbook can outline those provisions the seasoned company attorneys have historically encountered; it allows attorneys to focus their attention and negotiation capital on the handful of clauses that have pragmatic and real business importance, versus wasting time on clauses and issues that are not critical or are hypothetically-but-not-actually important to the business.

Additionally, as a supplement to a playbook, many legal departments have developed checklists covering certain agreements or types of matters. Because busy attorneys are often drafting and negotiating multiple agreements at the same time, important aspects of an agreement run the risk of being overlooked or forgotten. A simple checklist, developed by the legal department for agreements and legal issues, can highlight issues of importance and ensure critical details are not overlooked.

Forms and Clause Bank. Lawyers will admit that they rarely, if ever, draft agreements from scratch. The more common method is to use an old document as a starting point. This method has significant drawbacks, including the time wasted searching for sample forms and clauses — on the Internet, in three-ring binders replete with paper forms of yesteryear, or otherwise. Consider the time spent searching “indemnification clause” on the Internet. The actual search might be quick, but time must be spent reviewing the thousands of results from unvetted websites and attorneys. Additionally, memoranda concerning routine legal issues can be housed on a platform, allowing attorneys to review materials that have been vetted and reviewed by colleagues and peers. The ability to access templates of forms or sample clauses can go a long way toward saving time for the in-house attorney.

Intranet & Share Drives. A company intranet is a depository that can house many of the tools the legal department needs. These shared portals dedicated for the legal team range from SharePoint® sites and shared drives to more sophisticated matter management and knowledge management systems that put all of the historical information and notes about the company’s ongoing legal matters in a single location. These portals host the aforementioned templates and playbooks, ensuring that the entire team can access company- and industry-specific documents, forms, and guidance. Establishing these types of systems allows a culture of knowledge-sharing among attorneys, as well as capturing institutional knowledge in a single place from which all team members can view and learn.

Other Efficiency Tools. There are a number of tools your legal department can utilize that will help attorneys and support staff produce quality work in an efficient and timely manner. For example, legal drafting and proofreading software can help streamline the drafting process, reducing clerical review time and ensuring documents are accurate and error-free. Additionally, e-billing systems automate law firm invoice review, freeing attorneys from administrative processes and allowing them to focus on legal matters.



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BEST PRACTICE: CLEARLY ARTICULATE COMPANY AND DEPARTMENT NEEDS TO ATTRACT QUALITY CANDIDATES

Hiring is on the rise in corporate legal departments. A recent Thomson Reuters survey confirmed that in response to the growing demands on in-house teams, almost two-thirds of the departments (60 percent) stated they made new hires in 2014.

How can a legal department best prepare itself for the hiring process? First, before the recruiting process begins, the legal department has to weigh the benefits of bringing in a generalist versus a specialist. In-depth analysis must be done in order to examine the business drivers of the company, what type of work is being done in the legal department, and whether or not that work will be temporary or sustained over a long period of time. If the influx of work is concentrated in one subject area, then the legal department may be best served by hiring a specialist. Many legal departments aim to structure themselves like an in-house boutique law firm, capitalizing on the depth and breadth of law or industry expertise that comes with hiring a specialist.

A legal department can always turn to the pool of outside counsel when seeking to recruit new team members. An attorney who has previous experience with your company reduces the amount of new-hire training necessary, because this attorney has a head start and a better understanding of your business, its drivers, and your company's risk profile.

Regardless of whether you hire an attorney with pre-existing knowledge of your business or otherwise, the best way to attract the right candidate is to have a clear understanding of your department's needs. The data you previously collected to make the business case to company executives for bringing more work in-house can be a road map: By looking at organizational goals and specific tasks that need to be done in the legal department, you can create a job specification targeting the perfect candidate in terms of legal expertise and industry knowledge.

During this process, however, don't forget to evaluate candidates' soft skills. Obviously, legal experience and knowledge is important for attorneys to possess, but strong candidates will also possess the following soft skills:

- Verbal communication skills are not just important in the courtroom. In order to work effectively within an organization and across the many departments it has, attorneys must be able to get their point across not only to their legal colleagues but also to nonattorneys in the company. Similarly, attorneys must be adept at written communication and expressing their ideas in a clear and concise manner — often for a nonlegal audience.
- The skill of active listening is a quality all employees should possess. Active listening is not just about hearing the words someone says; it's about taking those words in, making an effort to understand them, and acting accordingly.
- Having empathy is a huge asset that attorneys should bring to their organization. Being able to understand other people's points of view can contribute to successful negotiations and conflict resolution.

Finally, if you're concerned about attracting a deep pool of candidates work closely with the human resource department so they understand the priority of hiring new legal staff. Also, cast as wide of an applicant net as possible. Some ways to do this include posting jobs on sites such as LinkedIn®, the Association of Corporate Counsel, or Inside Counsel. Partner with sites that have in-house positions, organizations that have in-house sections, and recruiters with in-house specialties. In addition, diversity bars — such as the Hispanic National Bar Association, the National Lesbian and Gay Law Association, the National Association of Women Lawyers, and the Association of Black Women Attorneys — can be good resources for promoting open positions.



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BEST PRACTICE: CREATE A ROBUST ONBOARDING PROGRAM TO LET NEW HIRES HIT THE GROUND RUNNING

Bringing a qualified attorney into the fold is simply the first step. In order for a legal department's "in-sourcing" efforts to be successful, the legal department must establish a robust onboarding program to allow the new hire to hit the ground running. Access to the aforementioned playbooks, checklists, and shared portals provides a foundation for this program. Additionally, in-house attorneys must be intimately aware of their company's products and services, corporate culture, and industry trends, as well as the specific legal work they're charged with doing. In order to accomplish this level of familiarity, an onboarding program should address:

- The organization's drivers, business model, operating structure, and philosophy, and how the legal department factors into its daily business operations and goals
- Trends within the industry and the legal implication of those trends. The onboarding program should guide the new hire to subscribe to important daily or monthly emails, blogs, newsletters, and websites
- The metrics the legal department uses to measure its internal performance as well as those used to assess outside counsel
- The company's culture, including its mission and values, management, and communication styles
- Current laws and regulations (and any upcoming changes) that affect the organization
- The organizational training on compliance and ethics
- The tools and technologies available to the legal department, and an explanation of how they make the legal department more efficient

In addition, an onboarding program should include training protocols for attorneys who are new to working in-house. This can include the support needed to help them efficiently transition into the role, such as training on basic business skills like accounting, finance, and project management.

One effective way of implementing a comprehensive onboarding program is learning by way of past experience. Asking attorneys what their experiences were when they started working for the company can provide a clear picture of what an onboarding program should consist of. Getting information about what these employees expected when they were hired, what they actually received during their training period, and what they wanted but did not receive will highlight opportunities on which to capitalize. And of course, all of these onboarding tools can be housed and maintained on the department's intranet or shared drive.

Getting acclimated to a company is always a challenge for new hires; however many attorneys who come to work in company legal departments feel like they're not given the opportunity to adjust. Many legal departments expect these workers to be fully up and running before they're ready. In addition to establishing a strong onboarding program, new attorneys may benefit from a buddy system that allows them to work with a specific mentor in the legal department. This gives new hires a trusted colleague that will answer their questions and show them how the day-to-day work of the department is done. Also consider pairing a new hire with an experienced employee outside of the legal department who can provide a broader understanding of the company and its culture.

CONCLUSION

The economic crisis forced legal departments to examine the cost of outside counsel and determine whether or not it makes better business sense to bring more legal work in-house. Because of their familiarity with the business and its decision makers, legal departments have long realized the efficiencies and benefits of in-sourcing work; accordingly, more departments are retaining work once directed to outside counsel. However, in order to implement this transition, a legal department must prepare accordingly by evaluating how technology can stretch existing resources; partnering with HR to identify a pool of talented candidates; and creating an onboarding program that utilizes tools like playbooks and checklists.

