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# To benefit clients and attorneys, more firms trade the billable hour for flat fees

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Attorneys Ross Gardner, left, and Jacqueline Langland work with Omaha law firm Jackson Lewis, which has eliminated the billable-hours tallies from associate lawyers' annual performance reviews. Gardner, in his sixth year with Jackson Lewis, called the billable hour "something that is always weighing on your mind."

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By *Russell Hubbard / World-Herald staff writer*

It sounds like a normal business trip: Omaha labor and employment attorney Ross Gardner traveled to Orlando, Florida, to speak at the annual human resources confab held by one of the firm's large clients.


But it wasn't so ordinary. In fact, if not for a recent change in compensation policy at the Jackson Lewis law firm, Gardner might have never made the trip at all, and would have missed out on what he calls invaluable face-to-face interaction with an important client.

The policy change that made the trip an easy decision? Jackson Lewis, with 800 attorneys nationwide, including 18 in Omaha, has eliminated billable hours tallies from the compensation and job performance evaluations for associate lawyers. Those are the younger ones aiming to become partners, and others who have chosen not to pursue

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becoming part of a law firm's ownership group.

Without one eye firmly on the billable-hours sheet, Gardner felt free to make the Orlando trip, where he gave a 45-minute talk on developments within the law pertaining to the National Labor Relations Board.

"I was able to take two full days out of my schedule, learn about one of our best clients and cement relationships with their human resources people," Gardner said.

Ranges vary, but typically, associate lawyers are expected to bill clients for 2,000 hours of work per year; doing so typically requires 60 hours to 80 hours of work per week, because not every hour of work is a billable hour. Reaching the target is by no means an impossible task, and lawyers at all levels are well-compensated compared with the average person.

"But it is something that is always weighing on your mind," said Gardner, who is in his sixth year with Jackson Lewis.

Jackson Lewis said it has eliminated the billable-hours calculation from the annual performance review not because it expects attorneys to work less, but because more clients are opting for flat-fee payment arrangements in which billable hours play no part.

"It makes for more of a collaborative effort," said Chad Richter, a partner in Jackson Lewis' Omaha office. "For many clients, their litigation and total legal spending go down."

In such arrangements, clients select from a menu of options. In the labor and employment law in which Jackson Lewis specializes, it might mean paying a set amount for a full year's worth of updates to the employee handbook, unlimited assistance with training people in the personnel department, or A-to-Z services related to lawsuits. Attorneys working on such projects don't bill by the hour and clients don't pay a cent more than they negotiated up front.

According to a bulletin on the topic posted on the American Bar Association website, alternative fee arrangements are a response to "the \$1,000 an hour lawyer" and can take many forms. There are setups in which all lawyers working on a matter get the same hourly rate, regardless of experience, and contingency contracts that specify lawyers get paid only if they achieve a certain result.

But the straight billable hour still reigns supreme in U.S. legal practices. Alternative-fee arrangements accounted for only 16 percent of revenues at the largest U.S. law firms in 2010, according to the latest wide-ranging survey on the matter, conducted by American Legal Intelligence.

Jackson Lewis, whose Omaha office used to be known as Berens & Tate, is not the only firm in town applying alternative fee and compensation strategies.

"McGrath North has, for many years, performed legal services using alternative fee structures, and the firm is very open to discussing with its clients the use of alternative fee structures," said Brenda Jenny, the firm's director of business development and marketing.

Jenny also said that McGrath North doesn't establish minimum billable hour requirements for its attorneys.

"Our evaluation of associate performance is instead based on a number of factors primarily focused on attorney effectiveness, work product, professional development and overall contribution to our law firm," she said.

At Koley Jessen, another large Omaha law firm, alternative fee arrangements also are available, said Tanya Prinz, director of business development and marketing.

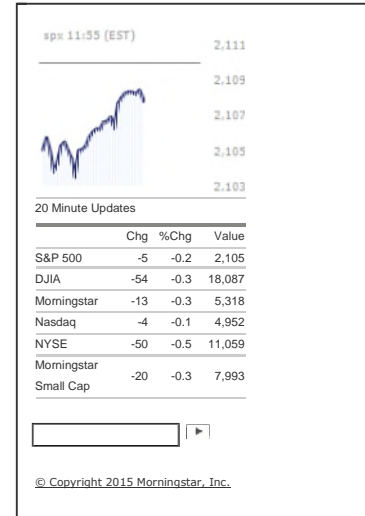
"Similar to most law firms, it is not a large percentage of our work, because our clients still primarily prefer the hourly rate structure," Prinz said. "But we have seen an uptick in the number and types of alternative fee arrangements in use over the last five years."

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Prinz also said the firm does use billable hours "as one of the many performance metrics" by which associate attorneys are evaluated.

"We place high importance on responsiveness to client needs, legal capabilities, teamwork, project management skills and community involvement," she said.

Alternative arrangements are becoming more common every year, said David Paige, the top man at New York-based Legal Fee Advisors, which is hired by companies to examine their legal bills, root out inflation and secure reductions. Setting one price for a year's worth of work, Paige said, allows companies to accurately budget for legal expenses and avoid the sticker shock that can come with complex or lengthy matters.

"Certainly for clients, it is considered more predictable," Paige said.

Paige, a lawyer himself who has served as a corporate general counsel and law firm partner, also said eliminating the billable hour crucible from the working lives of associate lawyers is a good development.

"When you must bill a certain amount, there is a temptation to round up or inflate," Paige said. "This is just more honest."

Chuckling billable hours as part of job performance analysis will help law firms recruit new talent, said Tasha Everman, director of career services at the University of Nebraska College of Law. She said there is a mentality behind the billable-hours standard that young people don't like, an implied sanction if an arbitrary standard is not met.

"It is not that they are afraid of hard work or long hours," Everman said. "But living your life in six-minute increments is difficult to do, and in my experience, the billable hour is one of the major reasons lawyers leave the private practice of law for government, academic and in-house corporate positions."

Jacqueline Langland, in her first year with Jackson Lewis after working as a clerk for a federal judge, found the transition to a billable-hours standard something to get used to; government attorneys aren't subject to it.

"It has been a drastic change," said the 2012 graduate of the University of Iowa College of Law. "Getting rid of it should have a positive effect on work-life balance."

Which leaves the question of year-end attorney compensation; billable hours weigh heavily in most law firm bonus and promotion-to-partner decisions. In their place, Jackson Lewis has instituted seven other factors, such as work quality, collaboration with others, new client recruitment and pro-bono work.

Such year-end evaluations are important to attorneys. One of the perks of being an attorney is a higher-than-average income, and one of the negatives is large student-loan debt.

Gardner, the Jackson Lewis associate, said he expects the transition from year-end evaluations based on billable hours to be revenue-neutral. He also expects the subjective factors involved in performance evaluation to accurately capture everyone's contribution.

"It does take a certain amount of faith and trust," he said. "But in the end, it should be better for everyone."

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