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The Future Of Law And The Demise Of The Midsize Firm

By FREDERIC S. NEWMAN

Much is being written about the demise of Big Law and the growth of "lifestyle" law firms in response to millennial demand for work/life balance. The Big Law partnership model of the large corporate law firm is criticized for overworking associates. Clients are no longer loyal. Technology is eating away at the competitive advantage of size. The best and the brightest are fleeing the wood-paneled halls for trendy upstarts. I do not believe that dire prediction is justified.

Nearly a year ago, Massachusetts Governor Charlie Baker signed a bill requiring equal pay for equal work, which also prohibited Massachusetts employers from asking prospective hires for their salary history. (The law goes into effect July 1, 2018). California, Pennsylvania, Puerto Rico, New Orleans and New York City have quickly followed suit.

While each local law differs slightly, overall, the intent of each is to promote salary equality regardless of gender, race or disability. In prohibiting employers from asking potential hires about their previous salaries, lawmakers seek to "level the playing field." Workers who might have accepted a low salary for one job would have an opportunity to "catch up" to the marketplace in a subsequent position, rather than be held to previous earnings.

Effective Oct. 31, 2017, the New York City Human Rights Law, for example, prohibits employers from making any inquiry into an applicant's salary history or taking an applicant's salary history into consideration when making a hiring decision. Employers may not have an agent, such as a recruiting firm, seek out an applicant's salary history information for them, nor may they seek out an applicant's salary history information, even if readily available online or in public records (as it is for many public employees). Rather than requesting an employee's current or past salary, employers are permitted to ask applicants for a targeted salary range.

Failure to comply carries significant penalties. In New York City, for example, the Commission on Human Rights, charged with enforcing the NYC Human Rights Law, can impose penalties of $125,000 for an unintentional violation, and up to $250,000 for a "willful, wanton or malicious" violation. The law is widely applicable. It applies to any business or professional services firm with at least four employees. Enforcement, however, may be difficult. The Commission on Human Rights must rely on job applicants to file a complaint reporting a potential employer's violation. Additionally, there is a private right of action, and the applicant may bring a civil lawsuit if she believes a potential employer has violated this salary history law. As with other provisions of the Human Rights Law, a prevailing plaintiff can be entitled to back pay, compensatory damages, and attorneys' fees.

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The progression to global law has significantly changed the law firm culture. Lawyers, who historically considered themselves professionals, today run their firms like corporations and their own practices like corporate executives. There is a maniacal focus on profits per partner and return on investment. In the benighted days of the last century, lawyers who worked their way up to election as a firm partner were dedicated to the firm. Today, long tenures are rare and lateral movement is commonplace. For newly minted lawyers, the promise of a partnership and security after investing seven to 10 years is an illusion.

Clients choose firms based on track record, reputation and the personal qualities of their lawyers. Law grads choose firms based on the promise of a future. Lacking the leverage of reputation and prestige, mid-tier firms have just not been able to compete. They are squeezed from both sides. Without the breadth, depth and reputation of the global megafirms, they cannot compete at the top end. Saddled with high overhead and no longer able to retain top-tier associates, they struggle to compete against the small, elite firms offering global quality without MidLaw or BigLaw overhead and fee structures.

Going forward against this backdrop, we now see the emergence of two distinct law firm models:

1. The global megafirm built to serve global enterprises; and
2. The entrepreneur and elite specialty practices that own a specific expertise and deliver global quality counsel to local and geographically dispersed clients efficiently and cost-effectively.

At our firm, we count ourselves among the second group of entrepreneurial, elite specialty practices. We never aimed to be a big firm masquerading as a small firm. While we do make a good living, we focus on delivering quality service in a professional and collegial environment. We hold the line on fees, workload and expectations. That has been our sweet spot and the secret of our success. We do the things we do very well and very efficiently. We are not a general practice firm. We are not a "lifestyle" firm. Rather, we are a firm of professionals who get the job done and we do whatever is required to generate the right results for each client. Some years are better than others. So what I'm saying is not idealistic. Nonetheless, we are not alone. The number of highly focused, expert boutique law firms is growing.

Fredric S. Newman is a founding partner of Hoguet Newman Regal & Kenney LLP, a New York City-based litigation boutique. The firm focuses on commercial litigation and dispute resolution; insurance recovery litigation and counseling; labor and employment litigation and counseling; white collar defense and governmental investigations; construction law; and intellectual property litigation.