

Analysis - Targets and Compensation

Many law firms ensure they have the infrastructure to support the practice of pro bono but some also actively encourage their fee-earners to participate in pro bono. There are different ways of encouraging lawyers to engage more in pro bono, by using incentives or by building pro bono engagement into appraisal processes to ensure lawyers are rewarded for their efforts.

■ AVERAGE HOURS FOR FIRMS WITH OR WITHOUT PRO BONO TARGETS



Fee-Earning Targets

The Index found that 62.8 percent of respondent firms have some kind of fee-earning or utilisation target in place for their lawyers that feeds into their appraisals or determines salary or some other performance related payment or incentive. Of those, more than 40 percent treat pro bono in the same way as regular fee-earning work while 20 percent do not consider pro bono at all in terms of reaching a fee-earning hours target. When pro bono work is given the same weight as fee-earning work, it is a powerful incentive for lawyers and ensures they do not feel penalised for engaging in pro bono work.

The respondent firms that have a fee-earning target in place provided an indication of whether, and how, pro bono is factored into hours or utilization targets:

- Pro bono hours and work treated in the same way as fee-earning hours and work: 42.7 percent
- Pro bono hours and work credited up to a maximum threshold: 14.6 percent
- A minimum fee-earning hours threshold must be reached before pro bono hours are considered: 2.4 percent
- Not considered: 20.7 percent
- Other 19.5 percent

Pro Bono Targets

One-third, or 33.3 percent, of respondent firms have a pro bono target in place, either encouraging or requiring their lawyers to undertake a minimum amount of pro bono, which has increased from 21.4 percent last year. This percentage is broadly the same whether the firm is international (36.9 percent) or domestic (30.1 percent). It is promising this number has increased even as the pool of respondent firms has expanded this year, suggesting that some of these targets may have been put into place over the last 12 months.

According to submissions this year, the majority of the firms that have a target in place base this on a pure “hours” target rather than asking lawyers to commit a specific percentage of their time or their billable revenue to pro bono. Most firms have opted for 20 – 30 hours per lawyer as the prescribed minimum amount of pro bono, though five respondent firms have targets of 50 hours per fee-earner per year, one has a target of 100 hours, and one firm has set a target of 200 hours. In many cases, there is a required or expected minimum level with a higher aspirational target in place as well. In the vast majority of cases, this target is closely linked to the remuneration of the fee-earners, whether through salary or bonus.

These findings are a shift from the 2014 findings where the average amount of pro bono hours performed at firms with targets was 42.7 hours compared to 29.3 hours at those without targets. According to the 2015 findings, there was very little difference between the amount of pro bono performed over a year by lawyers at firms with a target – 32.8 hours per fee-earner – compared to lawyers at firms without targets – 32.3 hours per fee-earner. But there was a difference at international firms with lawyers on average undertaking 42.2 hours of pro bono at firms with a target compared to 39.9 hours for lawyers at firms without a pro bono target. Fee-earners at domestic firms with a target on average perform 25.2 hours of pro bono compared to 20.7 hours at domestic firms without a target.

Interestingly, international firms and domestic firms with offices in only one country provided quite different results. The different attitudes and differing impact that the presence of the various elements of a pro bono practice have is unexpected and something to be considered. The different sizes and resources of the respective firms may be a factor as well as the cultural context of the lawyers.

Aspirational v Mandatory Targets

The majority of firms that have a target in place have an aspirational target to encourage their lawyers to achieve a minimum level of pro bono engagement, rather than a mandatory target, under which lawyers are obliged to reach a minimum level and risk being penalised for failing to do so. The Index found 65.2 percent of the targets are aspirational, compared with 34.8 percent being mandatory. The breakdown between international firms and firms with offices in just one jurisdiction was broadly similar. Amongst international firms, 68.0 percent of those with targets in place have aspirational targets which drops to 61.9 percent for domestic firms. Last year's findings suggested some 55 percent of firms with a target made it a mandatory one. The questions relating to targets have been clarified this year and this change in the numbers is likely to be a result of more accurate information this year.

Lawyers at international firms with an aspirational target tend to perform more pro bono than their colleagues at international firms with a mandatory target - 42.6 hours as opposed to 40.0 hours. Again, this trend is reversed for domestic firms, with lawyers at domestic firms with mandatory targets on average undertaking 43.2 hours of pro bono over the last year whilst those at firm with aspirational targets performed 15.4 hours. Overall lawyers at respondent firms undertook 32.0 hours of pro bono on average when there was an aspirational target and 37.6 hours when the target was mandatory.

Appraisals

As with other industries, lawyers' remuneration is increasingly performance-based and measured and monitored through appraisal processes which are becoming increasingly formal around the world.

To further help encourage lawyers to engage in pro bono, many firms factor participation in pro bono into their appraisal processes. This allows lawyers to be recognised for the work they are doing, irrespective of whether it is fee-earning work or not, and helps ensure that pro bono is considered an important and valuable part of the firm's culture. Two thirds of respondent firms, or 66.2 percent, factor pro bono engagement into this process in one form or another but this figure drops to 46.6 percent for partner appraisals.

Respondent firms were asked how they factor pro bono into the appraisal process for lawyers (non-partners) at their firm:

- All pro bono hours and work treated in the same way as fee-earning hours and work: 51.6 percent
- Pro bono hours and work taken into account but given less credit than fee-earning hours and work: 13.2 percent
- Whether pro bono has been done or not is taken into account: 15.4 percent
- Other: 19.8 percent

Where pro bono is factored into the appraisal process, the impact on the amount of pro bono performed by lawyers is dramatic. On average, lawyers at firms that take pro bono into account performed 35.7 hours of pro bono each over the last 12 months. When firms do not take pro bono into account, this average drops by almost half to 18.8 hours.

This difference is even more pronounced at international firms, where lawyers performed 46.0 hours when pro bono was taken into account in appraisal processes compared to 9.0 hours at firms that do not. This trend is not repeated at domestic firms, where lawyers undertook 21.6 hours when pro bono is taken into account, compared to 22.4 hours at firms that do not take pro bono into account during appraisals. It can be inferred that lawyers are more willing to put effort into projects if they know their efforts will be acknowledged and therefore potentially rewarded. The large difference between international and domestic firms reflects differences in relation to a number of factors tracked. Size and local context has a strong impact. Many of the smallest firms may not need these sorts of incentives for passionate lawyers to be heavily engaged.

The impact of taking pro bono into account in the appraisal process is also significant when looking at the percentage of lawyers undertaking 10 or more hours of pro bono. At firms where it is taken into account, 48.4 percent of lawyers did 10 or more hours of pro bono, compared to 35.4 percent where it is not taken into account.

Compensation

Just under half of the respondent firms, or 47.9 percent, also take pro bono into account when determining compensation for lawyers, a calculation that historically was closely linked to experience and in recent years increasingly correlated to performance and revenue generation. When looking at partner compensation, this figure drops to 25.0 percent amongst respondent firms.

Rewarding lawyers for the pro bono work they undertake is another helpful tool in breaking down barriers that might otherwise prevent or at least inhibit engagement. Given the well-known pressures that lawyers often find themselves under, and the fact that many law firms have high utilisation targets, it is possible that lawyers may feel financially penalised for getting involved in pro bono matters if they are not rewarded for their efforts and this work means they do not reach their required targets.

Amongst international firms, 69.7 percent of respondent firms factor pro bono into the compensation determination process, whilst at domestic firms it falls to 28.4 percent. As with other findings, international firms seem to have put more formal measures in place to support pro bono initiatives at their firms.

Lawyers at firms that do take pro bono into account when determining compensation typically perform far more pro bono than those at firms that do not: 38.0 hours per fee-earner compared with 22.5 hours. Again this difference was more pronounced at international firms where lawyers with pro bono factored into their compensation determination performed 45.3 hours of pro bono over the last 12 months compared to 24.0 hours at other firms. As with the other initiatives to promote lawyer engagement, the impact is lessened for lawyers at domestic firms, where 22.0 hours of pro bono were undertaken if pro bono was part of compensation decisions compared to 22.1 hours.