

## **Hiring, Evaluating, Retaining, Firing: Managing Human Resource Issues**

- How much support staff do you need?
- What can you not afford to do without?

### **How Many Staff to Hire**

The minimum number appears to be zero. If you are a new lawyer, opening a solo practice, it would be tempting to try to do without an assistant until business picks up. However, the generally accepted wisdom is that you should never do any task you can pay someone else to do at a lower rate. Any of your time not taken up by file related work is more profitably spent on building the business or growing your skills.

The solution may be to start with one assistant who works less than full time. This could be an attractive option for an assistant with other commitments (a young family, for example). However, if you are a relatively inexperienced lawyer, I believe it is important to find someone with a fair amount of law office experience. You may be able to find someone who wants to work less, leading up to retirement.

If, on the other hand, you already have experience working in a law firm, and are moving to start a solo practice, I am now a convert to hiring people with no legal training whatsoever, but who show they are smart and have a great attitude.

With patient mentoring for a surprisingly short period, smart people make the best assistants.

### **How to Hire**

It is tempting to place an ad in the Spectator. However, no matter how carefully you word your advertisement – must have x years of law office experience, Word, Excel, PC Law etc – you will be flooded with responses, usually in the hundreds, and most of them will be completely inappropriate. Some examples from my office include a gas station attendant, and an air traffic controller (from India). You will waste hours poring through these, and they will break your heart. When you finally winnow it down to a manageable number, you will have to set up interviews. This is very random process. It is almost impossible to tell what someone will be like to work with after a 30 minute interview. Everyone will tell you they are detail oriented workaholics whose dream is to sit in your office and cater to your every whim. It is very important to check references by phoning previous employers. But even that is not foolproof. Many employers are reluctant to tell you the truth about a problem employee.

Other ways of finding candidates include looking on the HLA website, using other websites such as Workopolis, or asking friends. It is considered very bad form to poach staff from other law firms. By that I mean approaching someone who is not actually looking for a change of job. It will make you a lot of enemies.

You will get a lot of resumes from people trying to change careers by taking courses, such as law office assistant, at community and private colleges. I have had no luck finding good people this way, especially from the private career colleges. Maybe your experience will be different.

Once you choose a candidate, it is a good idea to make your job offer in writing. Attached at **Tab 1** is a sample job offer letter drafted by Ed Canning at Ross and McBride. This letter clearly sets out termination provisions, restricting the employee to the minimum under the *Employment Standards Act*. It also confirms that benefits will continue during the ESA notice period. You may want to add a sentence that says the first three months are a probationary period. You must allow the candidate several days to review this letter before signing it back. Otherwise, the employee can claim to have signed it without any opportunity to review it, possibly with a lawyer, and under pressure to sign.

Accompanying the job offer letter, you should also send a confidentiality agreement. Attached at **Tab 2** is a precedent agreement from LSUC's website.

### **Evaluating Employees**

HR professionals will tell you it is good practice to schedule regular performance reviews with employees. Often there is one review, often accompanied by a first pay raise, after the first six months. Reviews are then usually conducted annually. You can find helpful templates for conducting a review by looking on the web. Attached at **Tab 3** is a useful generic form from MIT's website.

### **How to Manage and Retain Employees**

It is very important to make your employees' working conditions as pleasant as possible. This is not just part of being a nice person – it is essential for your own well-being and the success of your practice. Most lawyers will tell you that one of the most challenging aspects of practicing law is dealing with difficult employees. It has been suggested that people need three things in order to be happy at work;

Autonomy – the desire to direct our own lives

Mastery – the urge to get better and better at something that matters

Purpose – the feeling that what we do has a larger purpose.

I believe you can only give employees a measure of autonomy in direct proportion to intelligence. If you have to micro manage someone, neither of you will be happy. So hire smart people, give them clear instructions, expectations and feedback, and arrange for regular mutual reporting. For most enterprises, a weekly meeting is considered essential. This is often short, but is the occasion when the goals for the week ahead are outlined, and the things that did not get accomplished the week before are reviewed and added to the new list.

There is one important *caveat* when considering what you can safely delegate to an assistant. There are specific rules governing what a lawyer can delegate to a non-lawyer. For example, your assistant cannot accept a client on your behalf, and cannot sign certain types of letters on your behalf. Attached at **Tab 4** is the relevant section of a publication from LawPro dealing with this issue. It includes a summary of common claims scenarios that involve supervision issues.

Mastery is an interesting concept. I believe everyone who works wants to feel they are doing a good job. This is why feedback and praise are important, provided the praise is sincere. You may also want to send employees on short courses to improve their skills.

One thing I have learned from my pre-law experience is how to handle mistakes made by employees. I believe it is crucial never to get angry or upset. If you do that, people will never come to you to admit a mistake the minute it happens, when it is most fixable. Instead, the employees will try to fix it themselves, often with disastrous results, or bury it completely, with catastrophic results. You must create a culture that says – this has happened, what can we do? Once we have fixed it, how can we create a new system that would prevent this from happening again? Because when an employee makes a mistake, it is always your fault – you did not have a robust enough system in place, or you hired the wrong person for the job. (Or you failed to spot warning signs of a formerly competent employee having a breakdown).

I believe that law office employees will have a sense of purpose if they are encouraged to understand the whole file. I have seen offices that are run like a car plant production line, with each employee only seeing a part of the file. That can't feel good.

You can find the going rate for salary by checking with some of the larger firms. I am a great believer in paying benefits. The OBA and the Chambers of Commerce all have great plans at good prices. Bonuses at any time are nice if you can afford them, and are certainly expected at Christmas. Other perks help morale – consider firm lunches, pizza days, birthday cakes etc.

### **How to Fire (and When)**

I believe firing is like voting – do it early and often!

It would be nice to think that all human beings are basically redeemable, and that problem employees can be coached into becoming cheerful, productive team members. Sadly I have stopped believing that. I believe you can identify problem personality traits early on in the employment relationship. This is quite distinct from employees making mistakes, which are bound to happen in the beginning but can be corrected with patient mentoring. Problem employees are those who have negative attitudes, are clock watchers, who criticize others, are habitually late, or are just unpleasant to be around. Life is too short to endure this – just fire them – preferably in the first three months, but just as soon as you reach the point when you realize that employee is actually making your life worse, not better.

My own philosophy of firing goes as follows. I discuss the quantum of the final paycheck with my bookkeeper and have the cheque made up with the last day of work being the Friday of the chosen week. This paycheck includes vacation pay and any termination pay (see the job offer letter for this, and don't skimp, always round up, not down). I also contact my IT person and arrange for computer access to terminate at the appointed time. Then I ask the employee to come to my office at the chosen time – usually some time on Friday afternoon. I tell the employee in the first sentence of the meeting that I am letting them go. You are not legally obliged to give reasons, and should try to avoid doing so. If you get into a discussion of reasons it can turn into a debate. The basic reason is that you have made this decision and it's not reversible. You must make every effort to preserve the departing employee's dignity. The employee may not want to collect possessions at that time, but may just want to leave quietly and return at some other agreed time to empty the desk. If you think the employee is too upset to drive, offer to call a family member, or arrange a taxi.

Never give working notice! The potential for damage is too great. It may not even be deliberate, but a departing employee is unlikely to be performing well after being fired.

### **Conclusion**

Running a law firm is challenging – like old age, it's not for sissies. But I believe you should never lose sight of the fact that you should enjoy coming to work. If you are not enjoying your life – change it. Do something else. This could mean changing to a different type of practice within law – or changing careers altogether. Unhappy people drag down everyone around them at work. Don't be one of them!

Helen Pelton