

KMS ProfitPower Tips for Lawyers™



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ROB OBSERVATIONS

Welcome to Issue 38 of ProfitPower™ Tips For Lawyers, December 2009.

As usual, I trust that you find at least some thoughts herein of interest and value to you in practice.

At various times during the twenty-one years plus KMS has been operating I've become even more acutely aware than normal of how many fundamental management mistakes the majority of law firms are still making.

Usually this state is brought on by what I've been finding in new client firms, but sometimes the frustration is exacerbated by finding that firms I've set up ideal systems in have not been following one or more of them, with not unexpected results for cashflow and profits or both.

In the last few months KMS has commenced working with quite a few new firms across a wide spectrum of sizes and shapes, and not surprisingly I find myself in that "dark place" once more!

My response is to include in the next few issues of KMS ProfitPower Tips an item on a key issue I see poorly handled in firm after firm...a serialised "heads-up" if you like.

In this issue I will deal with the need for firms to have good capabilities in really managing people...looking at some of the serious downsides of not getting it right.

Everyone knows that wages are a huge annual investment, the biggest a firm makes usually, so it's self-evident that it's critical to what you can achieve in both short and long term that the labour purchased by your wages is not wasted, in terms of effective productivity.

This is particularly so at the upper end of labour productivity potential, where generation of proper revenues, hopefully well after break even where all your overheads (including proper partner salaries) are covered, because the revenue then generated is almost 100% profit.

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Take a very simple example...two partners truly generating profit of \$100,000 each per annum after salary (Salary will usually be in range of \$250,000-\$400,000).

If there is productivity wastage of only \$200,000pa in the firm (and remember the KMS experience is that's it's generally around \$150,000 per lawyer) fixing the leakage will add about \$100,000 extra profit per partner per annum...an increase in profit of 100%.

These sorts of improvements are common...and make it clear why getting this area of management right can be so worth doing and so rewarding...year after year.

Importantly, better profits make the partners' interests more valuable, and also improve options for succession, because more good people can be attracted to, and kept in, the firm and more of the suitable equity candidates will take the view that the profit levels make buying in very attractive.

Sensible systems that fit with your firm culture that get labour firing on all cylinders must be sound in design and sound in operation...and be a genuine "Win-Win" so all suitable team members can fully benefit in terms of remuneration and career progress, by following the systems.

I trust you find the pointers in the article to follow a useful reminder of just one key area where management needs to maintain skills and focus considerable energy.

The Editor, Rob Knowsley, is a lawyer, admitted 35 years, who practiced successfully with firms of all sizes – city, suburbs and country... in Australia and New Zealand. As KMS Senior Consultant, his insights are further based on the experience of twenty-one years of consultancy assignments, and telephone/e-mail support, for lawyers...in all areas of practice management and profit building. Many practices have quickly reaped the monetary benefits and enjoyed the feeling of being in more control of their business through his practical help...as multiple referees attest.

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Major Management Errors In Law Firms...

KMSTIP #1: Failing To Attain, And Utilise Properly, The Ability To Really Manage People...

It goes without saying that law is still essentially a “people” business. Team members in law firms need to have good people skills to work with internal and external “clients”.

From the management perspective you need to start with a few important assumptions about people.

Truly excellent people don't usually require a lot of managing, but by the same token they're harder to find in the first place, usually cost more of course, and can be harder to keep.

It's a given that you do need to get rid of really bad people quickly.

You're still left with the reality that you're trying to run your business using a body of people who in the main have average abilities.

In my experience average people (ie: most of the people likely to be employees in most law firms) need leadership and management that is firm but fair, and very clear in its expectations of them.

People really do need to be praised for good work and behaviours, and also promptly pointed back to the desired approaches where they don't do what is asked of them.

My experience is that most partners and other managers in law firms do not do nearly enough to make clear what is expected of people, thank them appropriately when it's done, and deal with the issues quickly when it's not!

Too many people say, or simply act as if, they hate “conflict”...and hide from it in large volumes of their “own real work”, forgetting that managing people to be productive and effective is about the most important work a business owner can have!

The end result all too often is that the really important part of the potential productivity of employees is lost, and to get even a modest return from the practice partners end up working far too hard.

These days at least 80% of an average firm's revenues get chewed up in overhead...assuming that overhead includes a reasonable salary for the partners, as it must. Forget the one-third/one third one-third rule...it was always seriously flawed because it ignored proper salaries for owners, but overheads in progressive firms simply cannot be held down to levels that create stagnation.

On this basis the reality is that huge numbers of law firms in Australia and New Zealand make no true profits at all...and some that do make a modest profit achieve it by partners working unreasonably hard.

The first 80% of an employee's productivity is reasonably easy to get (which makes us wonder why so many firms fail even to get that) but the balance 20%, which often represents the true commercial profit potential of a practice, is a lot harder to achieve.

To achieve it consistently you need good systems, great clarity around your expectations of people, and a real willingness to do the teaching and face to face mentoring, and yes, disciplining if necessary!

Partners often complain that they do not have the time, but usually it's not really a lack of time but a lack of will, arising out of a lack of appreciation of the huge potential returns of all types from getting it right.

For a practice to be truly successful, and almost always a practice has to be properly profitable to remain truly successful, partners first have to make the time to learn how to manage well, and make the time to consistently manage well in fact.

For fee earners most firms do not establish any real clarity around what is expected, and in particular do not ensure that at all times each person has a “healthy backlog” of Client work.

Consequently productivity is almost always ad hoc, revenues far less than they can and should be, and profits low to non-existent.

All the while employees are of course paid 100% of their agreed remuneration, and all suppliers to the practice get paid (sometimes even on time)!

The KMS approach over the last twenty years or so has been to use WorkPlans™ for every fee earner to set clear expectations of

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minimum inputs and recorded activity in FirmTime and ClientTime.

The actual results in all key areas are tracked in KMSFeedBack Reports™ so team member and management can see what is happening and discuss where it is on track and where it is not, and agree what needs to be done about anything.

Whenever I de-brief unhappy employees heading for perceived greener pastures, they invariably unburden themselves on me with stories of how badly managed or disorganised one or more of the partners is. They have had little clarity around what was expected of them and almost never had enough appropriate Client file work.

On the other hand when I meet with “happy-in-harness” high

achievers in well-managed firms...the same people who encourage their friends to apply for jobs there...I hear that what they like is the clarity of expectations and a real focus on ensuring that they have enough Client work to progress the development of their skills, and meet their agreed fees targets.

Almost always, they enjoy being heavily involved in the firm’s Business Development.

So...in the next issue I plan to look at the second most important management failing...

The inability to be effective in using Business Development to take the business to the size and shape you want it to be at any given stage in its development...

Does your whole team live a culture of sound cash flow management?

One of the dangers of running a business using professionals is that many are very capable technicians, but do not have the same skills in other areas critical for business success.

Surprise, surprise...lawyers are very prone to this short-coming!

One important area where I see regular problems is cashflow management.

There are lawyers who are hopeless at getting the client engagement right...at a number of levels, but in particular in professionally arranging to get paid!

At the next stage, many lawyers simply do not have decent systems for keeping the working capital tied up in unbilled Work in Progress moving by billing every possible matter at the earliest possible time commensurate with the arrangements made with the clients upon engagement. It’s often ad hoc and, “If I can get around to it”.

Far too often systems for following up Debtors promptly either don’t exist or are honoured more in the breach than the observance. Debts are written off without any proper professional attempts to get them paid, or finally handed to a professional for action after a year or more of inaction by the lawyer(s) involved.

There is a culture in many firms of trying simply to meet fee budgets. I can “hear” already some readers asking themselves, “What’s wrong with that? I thought that was a good thing...the whole idea!”

The problem is that fee targets are almost always averages,

and cashflow in law firms doesn’t work that way. The only way to bill is to bill every possible matter at the earliest possible time, ignoring fee budgets altogether.

If then a fee budget is exceeded, so be it, and if a fee budget is missed, where can be the criticism?

Fees are underpinned by having enough work and getting it done. If that happens, and you use a program like KMSCyclicalBilling™, optimal fees flow is guaranteed at all times and targets can be consigned to the background where they belong.

Cashflow is another issue altogether. Having enough work, doing it on time, getting the engagement processes right, billing optimally, and chasing debtors promptly and completely professionally, cashflow will be fine.

Easy to describe...harder to get professionals rounded enough in their behaviours to do the right things consistently, especially if you reward their incorrect behaviours with increased salary and promotions.

The loudest and longest lament I hear in firms week in, week out, is that cash is tight and that partners seem to be working harder and harder just to keep the firm afloat.

If this resonates, it’s time to talk to an expert about exactly how to change the culture and your outcomes, forever...just click here to email us to set up a chat...
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Implications Of The Fair Work Act For Your Practice

Australian Workplace Relations... we are indebted to Rhondda Nicholas for her kind preparation of this heads-up overview...

Since 1 July 2009 employment law at the Federal level has been governed by the *Fair Work Act 2009*. The new Act has made a number of important changes in the areas of unfair dismissal, the making of agreements, and dispute resolution. It has also introduced two new bodies, Fair Work Australia and the Fair Work Ombudsman.

While many changes have already taken place, others will be implemented shortly. For example, the Australian Fair Pay and Conditions Standard will be replaced by the National Employment Standards on 1 January 2010 .

Is my practice/firm covered by the Federal system?

Your practice or firm will be covered by the Federal system if it is a:

- constitutional corporation (including a financial or trading corporation - generally entities with "Pty Ltd" or "Limited" after their names);
- an employer in the ACT, the NT and Victoria;
- an incorporated company (eg: "Pty Ltd") in a Territory;
- an employer covered by a federal award before 27 March 2006, but which is not a constitutional corporation (these employers will transition out of the Federal system by March 2011).

Practices which are sole traders, partnerships or trusts are not constitutional corporations and are not in the Federal system. Corporate trustees, however, may be covered by the Act.

If your practice or firm is a "small business" within the definition in the Act, you may be exempt from certain provision of the Fair Work Act. Up to 1 January 2011 your practice will qualify for the exemption if it employs fewer than 15 full-time equivalent staff. A complex calculation is required to assess whether this test is met.

What changes are most likely to affect my practice?

If your practice or firm is covered by the Federal system, you are most likely to be affected by the provisions of the National Employment Standards and the introduction of Modern Awards, both of which come into force on 1 January 2010.

Hours

The National Employment Standards limit employees' working hours to 38 hours per week plus "reasonable additional hours" averaged over 26 weeks. This provision applies to both full-time and casual staff. Prudent employers will keep records of the time worked by staff over this period to demonstrate, if necessary, that they have met the Standard.

However, before asking, or allowing, staff to work "reasonable additional hours" employers also need to consider 8 factors including whether there is any risk to the employee's health and safety; whether it may cause problems for the staff member's personal circumstances eg: caring for dependent children or aged parents; the needs of the practice/firm; and the staff member's entitlement to receive overtime payments.

Redundancy Pay

Under the National Employment Standards all employees are entitled to receive redundancy ("severance") payments if their employment is terminated for reasons of redundancy. The scale of payments reflects the Award standard and ranges up to 16 weeks pay, based on the employee's length of service. It may be arguable that the period of service required to qualify commences on 1 January 2010.

For highly paid employees (more than \$108,300 as at August 2009), whose termination benefits may exceed this scale, it is possible to avoid the nasty surprise of a claim for statutory severance benefits in addition to any contractual entitlements. Those practices that qualify as small businesses may avoid the obligation to pay severance pay.

Flexible working arrangements

Any employee who is a parent or has responsibility for a child under school age may request flexible working hours. To qualify an employee must have been employed by the employer for 12 months continuously. It also applies to casuals who have a reasonable expectation of continuing employment. An employer may refuse on "reasonable business grounds" and Fair Work Australia cannot enforce a breach of this Standard.

Parental leave

The National Employment Standards provide for 12 months unpaid parental leave for employees with more than 12 months continuous service or for long term casual employees. Either parent may apply for parental leave. A written response must be provided by the employer if refusing on "reasonable business grounds".

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Annual leave

The National Employment Standards do not provide for annual leave loading. 4 weeks paid leave as at present remains an employee's annual leave entitlement. An employer may not reasonably refuse a request by an employee to take annual leave. Employers may direct employees to take annual leave during annual shut down periods eg. Christmas/New Year.

Fair Work information

Employers must provide each new employee a Fair Work Information Statement at the commencement of their employment. This can be downloaded from www.fairwork.gov.au

What are Modern Awards?

As part of the new amendments to employment laws, Australia's award system is being streamlined with the goal of creating fewer awards to provide broader coverage across industry and occupational lines. The streamlined awards are called "modern awards" and will contain provisions covering wages, conditions and allowances and will come into effect on 1 January 2010. They encompass the National Employment Standards.

On 1 January 2010 the Legal Services Award 2010 (Award) will come into force. It applies to the same employers as does the Fair Work Act (see above). It incorporates the National Employment Standards, sets minimum wages and related matters and sets out a requirement for employers to consult employees if they wish to introduce "major changes in production, program, organisation, structure or technology" that is likely to have significant effects on employees. Transitional arrangements apply such that prescribed rates of pay may be implemented on a sliding scale over the period 1 July 2010 to 1 July 2014. The Award sets out classifications and competencies for all legal, clerical and administrative employees in the legal services industry up to and including law graduates. The latter have completed their law degrees but are not admitted to practice. The Award does not apply to solicitors.

Contracting out

Under the Workplace Relations Act an employer could not contract out of an award. However, under the Fair Work Act, where an employee is considered "high paid", the employer can exclude the employee from award coverage by giving an undertaking guaranteeing that the employee's total remuneration will exceed the limit set by the law, which is presently \$108,300 a year. The amount is indexed each August.

Contracts can be entered into that exclude penalty rates, overtime and redundancy payments.

Terminating employees

The most important change for employers in this area is the removal of the requirement of WorkChoices that an employer must employ 100 or more employees before an employee is able to apply for relief from unfair dismissal. Also gone is the "genuine operational reasons" exemption that applied under WorkChoices.

The unfair dismissal provisions provide for a 14 day limit for an employee to lodge an unfair dismissal claim with Fair Work Australia. The limit is 60 days in the event of an employee claiming an unlawful (prohibited grounds including discrimination) dismissal.

An employee must be employed for 6 months by the employer to qualify to bring an unfair dismissal claim, and for 12 months by a "small business" employer. A salary cap of \$108,300 which prevents application to Fair Work Australia applies to federal employees not covered by an award or enterprise agreement. However, the salary cap does not apply to award and enterprise agreement employees.

Employment contracts

Employers should ensure that their employment contracts are Fair Work compliant as Fair Work Australia is demonstrating that it intends to actively enforce employee entitlements.

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