

# Lateral hiring in the best of times and the most turbulent of times

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Lateral hiring in the legal industry has long been a chaotic — and often redundant — system for years. It has created a market in which talented partners often find themselves bouncing from one place to the next, never quite finding a firm where they can truly integrate.

For BigLaw firms, the revolving door of talent has become the norm and provides little incentive to break away from the herd and change lateral hiring practices.

The legal industry is not typically known for being quick to change the way it does things. Deviating from what's considered the norm is often seen as a risk.

For many firms, the ongoing pandemic and subsequent economic downturn have reinforced this behavior, as they hunker down and quietly wait for the storm to pass.

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But the recent economic uncertainty has also caused many firms to be introspective. It's forcing them to reevaluate the sustainability of their lateral hiring strategies, and in some cases, even their business models in general.

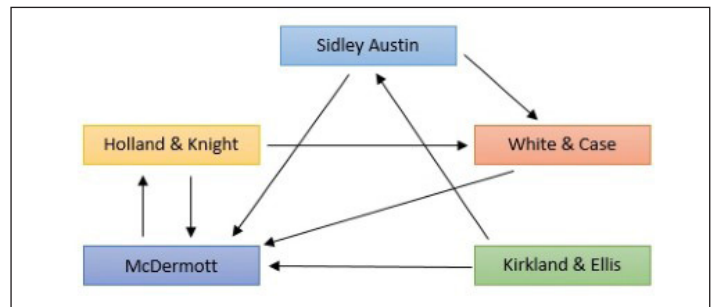
They're figuring out that what may manage to pass in the best of times, certainly cannot be sustained in turbulent times.

## LATERAL HIRING IN THE BEST OF TIMES

On the surface, lateral hiring is a tempting prospect because it presents the opportunity for firms to grow quickly by acquiring large books of business and diversifying their practice areas.

Big-name laterals can also add clout and consumer value to a firm's brand. However, the hunger for acquiring talent seems to have produced a system of hectic exchange, especially among BigLaw firms.

Take for instance, the departure and hiring of partners between five major Am Law 100 firms in 2020 alone:



The numbers tell a similar story. An extensive study on lateral hiring conducted by Decipher and ALM Intelligence in 2018 found that:

“Success rates in lateral partner hiring among Am Law 200 firms are relatively low. Twenty-four percent of lateral partners leave the firm that hired them within three years. Nearly half leave within five years. Even worse, two-thirds of lateral hires won't produce 75 percent of their expected book of business. Given the average cost of hiring a lateral partner per year is \$1.7 million (including basic salary, recruiting fees and onboarding costs), such low success rates are not trivial to a law firm's finances.” (Nicholas Bruch, et al. *It's Time to Overhaul the Lateral Hiring Process*, AM. LAW. Jan. 29, 2019.)

These numbers point to the troubling fact that not only are attrition rates among laterals extremely high, profitability rates are also abnormally low.

There are most likely several reasons for this.

To begin with, the compensation model of most BigLaw firms squeezes partners financially, to the point where many get squeezed out entirely.

In order to funnel higher profits to partners at the very top of the pecking order, many other attorneys are pressured to bill rates that aren't necessarily proportionate to the value of their work.

This can leave partners between a rock and a hard place — between clients vying for better value and a firm structure pressuring for higher profitability.

This can send many talented partners searching for an alternative, more flexible platform than their current firm provides, one on which they can truly grow their business.

On the other side of things, once a new lateral hire has been brought on board, a lack of initiative in making sure the attorney is both a cultural fit for the firm and is properly integrated can contribute to unprofitability rates and attrition.

Simply attracting new talent obviously isn't enough if those partners don't stay or don't become engaged with the firm in a meaningful way.

As part of the same 2018 Decipher and ALM Intelligence report mentioned earlier, a survey revealed that 74% of Am Law 200 firms have had lateral partners leave within the past five years due to "personality or cultural issues."

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This statistic stresses the importance of ensuring that lateral partners don't become alienated when moving to a new firm.

Below are four considerations that firms in general should take into account when bringing on new talent:

#### 1. NEED FOR PRACTICE AREA

A partner's practice area should make sense in terms of fitting in with the firm's other practice groups.

If a lateral hire's expertise doesn't fill a need or bolster an existing practice group, it's worth reevaluating how that partner's practice is going to function practically within the firm and help land new clients.

#### 2. CROSS-SELLING

It's critical to consider whether or not a lateral hire's clientele has use for the firm's other services outside of the new partner's. Cross-selling is a powerful and strategic way to multiply revenue across practices and to retain clients.

#### 3. ECONOMIC FIT

The rate sensitivity of a new partner's clients must match the rates typically used by the firm. A partner whose rates are too high can alienate existing clients, and a partner whose rates are too low may not be able to provide profitable work for other higher-rate partners.

#### 4. INTEGRATION

Shedding the "silo mentality" and encouraging attorneys to collaborate can not only bolster business, but can give individual attorneys a greater sense of connectedness and satisfaction.

A firm where all of the members are pulling in the same direction is also going to be more stable — especially in times of market instability.

#### LATERAL HIRING IN THE MOST TURBULENT OF TIMES

In times of economic stability, the risks and losses that come along with haphazard lateral hiring can typically be absorbed, and firms can afford to get away with certain levels of stagnation and unprofitability.

But in times of turbulence, when the market is unstable and the legal industry is contending with the fallout of a global pandemic, things change.

As the onset of the COVID-19 pandemic and ensuing lockdown have rocked the legal industry as a whole, lateral hiring strategies have naturally also been affected. In most cases, firms have slashed their lateral hiring efforts.

A survey conducted in June 2020 by the National Association for Law Placement (NALP) found that 40% of firms reported a decrease in their volume of lateral hiring from March 1st through May 31st, 2020, compared to this same time period last year.

Additionally, legal analytics firm Decipher found that between January 1 and August 31, there had been 10,233 lateral moves among partners and nonpartners — a 30% drop from last year.

Considering the expense, time, and risk associated with recruitment efforts, many firms — especially those that have already had to resort to pay cuts, furloughs, or layoffs — aren't willing to continue lateral hiring at the same capacity as before. (Dylan Jackson, *Dragged Down by Finance and Energy, the Lateral Market Has Cratered*, AM. LAW. Oct. 8, 2020.)

There are exceptions of course. Decipher also determined that there has been a recent uptick in lateral movement for certain hotbed practice areas. For example, bankruptcy has increased by 30% compared to the three-year average, and Data Privacy has increased by 46%.

But as an overall trend, firms have slowed their lateral hiring, and many are battenning down the hatches, just trying to ride out the storm.

This is largely a consequence of the typical BigLaw leverage model, which relies on lower-tier partners feeding profit to those in the upper-tier.

Layoffs, pay cuts, and client pressure to discount rates have put this already fragile system under duress and are making it difficult and risky for firms to bring in new talent.

But while many firms are simply trying to manage the fallout, there is a smaller contingent of firms who are finding ways to grow amidst the uncertainty.

In a recent *American Lawyer* article, Garrison & Sisson recruiter Dan Binstock was quoted as saying, "The leadership

at these firms [that have continued partner hiring] usually view obstacles as opportunities, and a thoughtful, but glass-half-full mindset is extremely compelling to lateral partners, especially in this current market.” (Dan Packer, *Buoyed by Recent Gains, Firms Embrace Opportunistic Hiring Amid Pandemic*, AM. LAW. June 30, 2020.)

For partners trapped at firms that are struggling to stay afloat or are making major cuts to partner pay and bonuses, firms that are continuing to grow and hire new talent can be an appealing prospect.

### Firms primarily focused on just limiting the damage may find that their talent is being leached away right under their noses.

This rings especially true for highly profitable partners who find themselves suddenly limited by the financial instability or stagnation of their current firm.

It also means that law firms that are focused primarily on growth (as opposed to mere survival) have a tremendous opportunity to attract new talent.

In the current crisis, with firms cutting and delaying pay, or funneling profits to the very top talent as an anti-poaching measure, many partners are being squeezed tighter than ever before.

This will likely leave many laterals looking for something different, looking for firms that are more responsive to change and more resilient to fluctuating market conditions.

It’s also causing many BigLaw firms to begin reconsidering their hiring strategies.

An October article in *The American Lawyer* noted that, “Experts say an increase in the fierceness of competition for talent, a more thoughtful approach to how firm business is conducted and, of course, the pandemic, have all combined to create an atmosphere where it is now more acceptable to

go against the grain of legal trends, to stop, as it were, trying to keep up with the Joneses.” (Patrick Smith, *Has Big Law Finally Lost Its Follow-the-Pack Mentality?* AM. LAW. Oct. 19, 2020.)

Whether or not this will result in actionable change among the giants of BigLaw and their long-term hiring practices is yet to be seen.

Firms primarily focused on just limiting the damage may find that their talent is being leached away right under their noses.

But for firms whose service delivery models allow them to stay agile, prioritize meaningful growth, and continue with forward-thinking lateral hiring strategies, the days to come hold less uncertainty, and more opportunity.

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#### ABOUT THE AUTHOR



**Roger E. Barton** is the managing partner of New York City-based **Barton LLP**, featured by Law360 as one of “10 Boutiques Giving BigLaw A Run for Its Money” and by Acquisition International in “Ones to Watch: The Best Boutique Law Firms.” He has been rated by the American Lawyer, Corporate

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