

## New Approaches to Outsourced Labor

By Ben Schmidt

Employees are the lifeblood of an organization. Companies, including law firms, are rightfully attempting to navigate what the past two years have meant to the labor force and make sense of the changes to the landscape so that they can successfully manage their businesses.

Included in this mix are outsourcing service providers. Over the past year, Mattern has had a front seat view to the broad labor issues facing our country writ small in the field of outsourced services for law firms. Service providers have had significant issues attracting, hiring and retaining talent to work for them on-site in law firms. And in turn, law firms have experienced serious issues having foundational functions executed upon, like mail delivery, reprographics work, records, and so on.

Recent labor market news and statistics tell us that the trends we saw in 2021 will continue for the foreseeable future. Recent job openings reports showed approximately 11 million openings with 6.9 million unemployed Americans in the same reporting period, which means there were about 1.5 jobs available for each person.

Reports also showed that there were only 6.5 million hires, thus despite the glut of positions, employers are having trouble filling the positions. Further, there were 4.2 million quits (also known as voluntary separations) in October, a trend that continued a streak of 4 million plus quits each month since July. And to round out this murderer's row of stats, of the nearly 5 million people who have left the workforce since the start of the pandemic,

nearly 70% are older than 55, which means somewhere around 3.5 million people may never return to the labor force.

What we have seen is that providers address these issues by focusing on salaries and increase investment/focus on recruitment and hiring apparatuses — the Human Resources function. While it is admirable that service providers are attempting to address their talent pool gaps via these two areas, it is worthwhile to consider whether it is enough to make a difference.

To consider whether salaries and bolstering the HR function is sufficient, it is probably a good idea to look at the things people are discovering about what makes today's employee tick. A few themes have emerged as front-runners.

### Top 4 Areas Impacting Labor

- First, workers today actively seek out the ability to work remotely. If a company is not willing to offer flexible or remote work, they could be eliminating their pool of candidates significantly. This is critical for service providers who depend on placing labor on-site at their client law firms. It is not possible for them to offer remote work under their current model and offering flexible work schedules is also very difficult as law firms do not want to pay a service provider for five employees only to have four show-up on a given day. The inability to offer flexible scheduling is brought into stark, and troubling, relief when compared to attorneys who benefit from flexible



in-office requirements as a matter of course in today's environment.

- Compensation has also emerged as a challenge. For service providers, this is somewhat of a reckoning as they have spent many years in a balancing act between offering competitive costs to their clients while continuing to be profitable. Oftentimes, this has been done at the expense of the labor they retain to place on-site, who were oftentimes underpaid. Then the pandemic struck and many of these workers were treated as front-line workers who were required to come in every day despite uncertainty around COVID and its impact on health, both short and long-term. When the "Great Resignation" began, as with other workers in this labor class, they demonstrated that they are willing to walk if they are not paid competitively.
- People are also unhappy with workplace safety. As noted, service provider employees on-site at law firms were treated essentially as front-line workers, required to

come in every day to handle mail, field copy jobs, run records requests, and create digital versions of files so that other law firm employees could have the freedom to work remotely. It smacks of unfairness. Luckily vaccines and other safety measures have mitigated this somewhat, but there are still significant hurdles to workplace safety: skepticism around vaccines, transmissibility of variants, effectiveness of vaccines to ward off variants, and so on.

- Career and life goals are another dominant theme. Workers today do not want to work a job just for the sake of working. They are actively seeking out their interests. If that means switching jobs, there is a glut of open jobs and will continue to be a large number of openings. If that means starting their own business, entrepreneurship has never been more accessible. Your average worker today can take the time to seek out a career that they love. How do service providers address these problems when the traditional model of on-site labor will continue to be the dominant model?

As noted, providers are attacking the problem with salary and bolstering HR. As to salary, providers are competing for the same talent as places such as Amazon, Big Box retailers, hotels, etc. As a result of competition and market forces, wages have increased everywhere. This means law firms are likely going to see an increase in their costs unless providers are willing to eat margin. Secondly, by focusing on augmenting their HR departments' capabilities, there seems to be an admission that salary alone may not cut the mustard.

One interpretation of these developments may be that providers will hedge their (increased salary) bet by creating the capability to recruit and stock a robust pipeline of potential hires which allows providers to continue to treat on-site employees like interchangeable widgets. In short, if an

employee leaves, they are easily replaceable with the next person up.

Another interpretation may be that providers will offer workers more than just salary, attempting to provide their hires more connection to a purpose and a career path — which is on-trend for HR these days. This is a critical item for providers to develop and connect the employee to a broader purpose, end game or goal and to see each function as in service of a valued career.

Mattern would argue that this is a good start, but there is more that could be done. Below are a few suggestions.

### **Invest in Backfill Labor Pools**

Providers ought to invest significantly in backfill labor pools. Each service provider has their own internal math which gives them an “ideal” ratio of on-site workers to backfill workers in every given market.

This ratio has almost always been insufficient to cover all a provider's clients' needs. Having a significant backfill pool in each market will allow them greater flexibility to offer such sought after perks like additional vacation time, more freedom to take an afternoon off to go to the doctor's office, or other life necessities that arise. A potential extension of such a program would be that some semblance of flexible work time *could* be possible.

### **Expand Skillsets**

Providers should look towards employee multi-functionality and invest in higher-compensated employees with diverse skill sets who can do the work of many. Providers today pay a lot of lip-service to cross-functional training, but Mattern has reviewed countless reports on cross-functional training and skills development, and often sees deficiencies in the end. Training a true cross-functional employee requires more than online classes. Further in-person guidance as well as oversight for an individual career path is likely needed. This may require a rethinking or overhaul of the hiring and on-boarding process, but if service providers truly mean to offer

value to their clients and rethink attracting talent, then this needs to be a consideration.

### **Company Culture**

The state of an on-site worker for an outsourced service provider is quite unique. These workers are placed in an environment that is not their company and asked to be both of their company and the company at which they are on-site.

There have been remarkable advances in how companies can foster environments that make employees happy, including technology and communication platforms. Programs related to diversity, equity and inclusion also make a difference for employees. There are other culture enhancing measures that could be undertaken like offering better commuter benefits, mental health and well-being benefits, or accessible social awareness programs.

### **Time for a Radical Shift?**

If the roadblocks to efficient and high-quality on-site service are too high to clear, then maybe the answer isn't to continue trying to fit a round peg in a square hole. Instead of continuing to try and make on-site service work, what if firms looked at a service model much different from the current one?

For instance, instead of retaining a dedicated on-site staff, firms could structure their entire outsourcing operation/contract as a vendor direct pass through, but through an offsite super center. This includes all equipment (centralized and walk-up MFDs, scanners, printers), labor, supplies, overhead (rent). The contract with the provider would be negotiated on a per unit basis with the outsourcing provider taking ownership of the generation of the daily individual client matter charges. And firms could structure this operation so that it is set up at a service provider's offsite operations center.

Many service providers have large offsite operations centers where they are able to handle all the varying degrees of work required by a law firm, and by sending the majority of work to these centers, firms could realize a double benefit. First, as noted, firms could structure costs as a pass-through, per unit cost, and thus recoup those costs by billing clients. External lit support or copy work completed by a 3rd party can be passed through and paid by the client with no write offs. These bills have a much higher likelihood of being paid. Second, firms could either eliminate entirely or significantly reduce their onsite labor.

The providers could focus on staffing up these centers of operation and create a centralized environment that pays attention to the workers. The items discussed in this paper could all still be addressed, but without the complication of sending as many staff members into foreign environments.

What is clear is that a business-as-usual approach to the labor market will not get the desired results. To get those, a change in approach or perspective is required. Law firms may think that the change ought to come from the providers whose job it is to provide these services, but as a client of these services, firms can demand change and force the hand of providers. Ultimately, service providers are there to serve what the market demands. And if the market demands change, they will move to meet that need.

**Benjamin Schmidt** is a consultant at Mattern & Associates. Schmidt received his JD from Villanova and has expertise both as a practicing law firm attorney, in-house counsel as well as on the vendor side at Canon Business Services. Schmidt leads clients in the analysis and negotiating stages of their engagements, leveraging his comprehensive and holistic understanding of the legal marketplace to gain the most strategic understanding of their needs and the most advantageous outcomes.

Ben can be reached at [bschmidt@matternassoc.com](mailto:bschmidt@matternassoc.com).

