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Will Pure Lockstep Partner Pay Survive The Decade?

By **Aebra Coe**

Law360 (September 16, 2020, 7:41 PM EDT) -- Generational differences and fundamental changes in the legal industry are driving an increasing number of law firms that pay partners based on seniority alone to reexamine their compensation systems, begging the question, will strict lockstep soon be a thing of the past? Some say it may survive, but in a greatly modified way.

Davis Polk & Wardwell LLP announced last week that **it was moving away** from its longtime partner compensation model to one that allows the firm to consider performance criteria along with seniority when determining pay. A number of other law firms have made similar moves away from pure lockstep in recent years, including Simpson Thacher & Bartlett LLP, Paul Weiss Rifkind Wharton & Garrison LLP, Clifford Chance LLP and Allen & Overy LLP.

Cleary Gottlieb Steen & Hamilton LLP is also planning to review its lockstep pay system, according to a media report out Wednesday.

"The number of firms with pure lockstep is a pretty short list now," said Lisa Smith, a consultant to professional services firms at Fairfax Associates. "To the extent some are changing their approach, they are likely responding to pressures on retention or a need for flexibility to attract talent in a way the lockstep wouldn't allow."

Cleary Gottlieb, Debevoise & Plimpton LLP, Wachtell Lipton Rosen & Katz and Cravath Swaine & Moore LLP are four well-known examples of elite U.S. law firms that still adhere to a traditional lockstep pay model.

A recent survey of 4,000 attorneys by Major Lindsey & Africa found that 12% said their law firm pays partners using some form of lockstep, but in all cases except one, those were modified lockstep systems like the new one Davis Polk has introduced, which take into account factors beyond seniority.

Changes in the industry and in generational views on law firm compensation are a very real "threat" to lockstep systems as we know them, according to Michael Short of law firm management consultancy LawVision.

"Firms are getting ready for generational shifts and different perspectives on pay," Short said. "You have partners at senior lockstep levels who say, 'Hold on, we played by these rules and created this incredible firm. I did this; why can't you?' But the wiring is different [among younger generations], and there's going to be a lot of changes in compensation systems over the next decade because of that."

Yes Lockstep, But Modified

As law firms recruit and poach partners from one another with increased vigor and speed — a phenomenon that some firms could once say they were impervious to — partner pay has become an increasingly important tool for recruiting and retention, experts say.

Typically, the firms that have adopted strict lockstep pay models are highly prestigious and highly profitable, as well as selective about who they let into the partnership.

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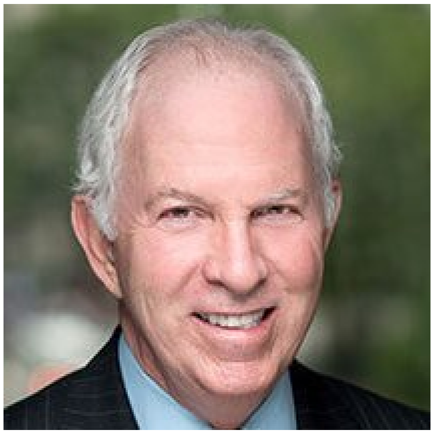

Jon Lindsey

Major Lindsey & Africa

That means pay usually starts higher than average for a junior partner and then rises over the years based on level of seniority until it levels off at a very high, but not always market-topping, rate. There is also often a lifetime pension waiting at the end of a partner's career at lockstep firms.

Those factors long helped to insulate the lockstep firms from losing partners laterally, but aggressive pay packages offered by firms such as Kirkland & Ellis LLP in recent years, which soar into eight figures for the highest performers, have proven to be formidable.

"In the war for talent, strictly sticking with a pure lockstep system can become a form of unilateral disarmament," said Jon Lindsey, New York founding partner of recruiting firm Major Lindsey & Africa.

The modified seniority-based system may be the inevitable next step for lockstep as a concept, according to experts who say allowing for more pay at the very top levels of performance, while maintaining seniority-based pay for the vast majority of partners, allows firms the flexibility to retain high performers while continuing to see the benefits of lockstep.

Those benefits are considered to include encouraging collaboration and teamwork because partners are less likely to hoard work the way they might if their pay is tied to the amount of work they generate and perform.

"The modified system adopted by Paul Weiss and others seems to work quite well," Lindsey said. "You get to keep the cultural advantages of lockstep for 95% of your partners, but you also get to reward the superheroes and avoid having them picked off by Kirkland and others who don't have the same constraints on their compensation system."

The Psychology of More Money

In the last few years, elite firms have been moving away from a strict lockstep partner compensation system to a modified system for two main reasons, according to Gloria Sandrino, a principal at legal recruiting firm Lateral Link who focuses on partner and group placements.

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Gloria Sandrino

Lateral Link

"One, retain top partner talent and business generators by having the 'flexibility' to pay them, and two, recruit top lateral partners," Sandrino said. "The reality of today's top Am Law is that culture and collaboration is not enough to retain top talent. They want to make more money."

Money has long been a driving factor in retention, but why it is important at elite, highly profitable law firms may be more complicated than it seems, according to Jaap Bosman, principal partner at TGO Consulting.

"If you make $4 million annually, there is little added pleasure in life if you make $15 million because you can't spend it anyway," Bosman said. "What we see at the top level of law firms is that partners don't move for money. They move because they have lost faith in the strategy of their firm, because they don't like the partner sitting next to them or for all kinds of personal reasons. Money comes into the picture, but it is rarely the primary driver."

One way money comes into the picture, Bosman said, is when it creates dissatisfaction with the firm's strategy because of discrepancies with peers who are perceived to contribute less but who earn the same or more.

It can also be a factor for partners if the firm next door has a profit-per-equity-partner result that exceeds their own or where recruiters repeatedly knock on their door with potential pay packages that are higher than what they currently make.

"If you have a Porsche, you would be happy with your car, but as soon as your neighbor has a Ferrari, you may feel dissatisfied," Bosman said. "On a certain level, yes, you need talent and can to a certain extent buy talent and reputation. But above a certain level, enough is enough, and then it's not the money as such, but the psychological things around it."

Broader Changes Impacting Pay

The challenge lockstep firms now face, according to LawVision's Short, is that there is a generational divide between the old school partners who were happy waiting 20 years to reach the top of the pay scale and a new generation that seems to have less patience.

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Less senior partners who are high achievers understand they could make more money elsewhere in the short term based on their performance level and don't in some instances want to wait a number of years in order to make those larger paychecks, Short said.

"As the non-Baby Boomers come into the partnership, they are very focused on getting to what is right and fair for them immediately and sometimes they don't want to pay their dues and wait to get to where they want to be long term the way their predecessors did," he said.

The moves made by firms like Davis Polk also reflect a new legal market that is driving the increased number of lateral moves by partners, according to Short.

In today's market, he said, institutional clients are less loyal to a given law firm than they once were and instead make decisions about who to hire on a given matter based on data and myriad other factors beyond long-standing relationships.

That reduction in consistency means that the business generation abilities of any given lawyer are even more important now because law firms can no longer rely on getting business simply because of an institutional relationship, he said.

Consequently, there is a premium in the marketplace for lawyers who are the "superstars" of business generation and have a large number of clients that they count as their own.

Fairfax's Smith agreed, pointing out that the premise of the lockstep model was built on the cohesion of partners working together with equal effort for their shared institutional clients.

"It's become more important over the years as client relationships have become less institutional and more driven by individual partners to reward their [business generation] efforts," Smith said. "Attracting and retaining clients is more of a premium now than I think it was when those systems were developed."

Still, when asked whether she thinks the traditional lockstep model will disappear, Smith leaned toward "not entirely."

"There may be some firms that are able to keep it and feel like it's critical to their culture," she said. "A point of discussion at some of these firms has been, 'Those motivated by money are not culturally consistent with our firm and we're OK letting those people go.' If it was a rush of people out the door, it may be a different scenario, but at the moment that is not the case."

--Editing by Jill Coffey and Emily Kokoll.