LJN LAW JOURNAL NEWSLETTERS

LAW FIRM PARTNERSHIP & BENEFITS Report®

An ALM Publication

Volume 16, Number 4 • June 2010

The New Legal Workplace

What Is Expected from Attorneys in the Era of Recovery

By Paul Silverman

The speed and shape of the American economic recovery is a matter of great debate. What is not up for speculation is the dramatic effect the downturn had on all businesses, including the legal industry. Workers and managers alike are struggling to figure out what will be expected from them in the coming business quarters, and how to deliver on these expectations. Here are three highlights for legal professionals which just may make the difference between being in the black or in the red.

Everyone Is in Sales

When times are good, organizations tend to forget this axiom because the gravy flows freely. But this paradigm is the backbone of any profitable endeavor no matter the economic or political temperature. I have worked with many attorneys who dread the responsibility of making rain for their firms. They went to school and got their JDs in order to practice law, not to be a poster child for Dale Carnegie. It's bad enough that they have to spend excruciating time each day filling in their billable hours (for those that actually do it each day). But the fact is, everyone had a choice in their career regarding compensation. If you want to be compensated at the higher end, you can hang

continued on page 4

The HIRE Act and the Health Care Reform Acts

Tax Highlights

By Richard H. Stieglitz and Tamir Dardashtian

It is safe to say that March 2010 was an extremely busy month for the tax community as President Obama signed into law the Hiring Incentives to Restore Employment Act ("HIRE Act") on March 18, and the Patient Protection and Affordable Care Act on March 23, as amended by the Health Care and Education Reconciliation Act ("Health Care Reform Acts") on March 30. The new laws have several significant tax-related provisions that affect individual and business taxpayers including law firms, attorneys, their staff, and their clients. More than $18 billion in tax incentives and relief provisions are contained in the HIRE act and $400 billion in new taxes and changes are included in the Health Care Reform Acts. These acts cover areas such as a new method for abating payroll tax on certain new hires, a new tax credit for retaining qualified workers, a favorable expensing provision for various asset acquisitions, small business tax credits for purchasing group health coverage, codification of the economic substance doctrine, additional 2013 Medicare taxes on higher income taxpayers and their investment income, and penalties/taxes related to health insurance plans or the absence thereof. Here are some highlights.

The Hiring Incentives to Restore Employment Act

Payroll Tax Holiday

When people say "the devil is in the details," they usually mean that small things in plans that are often overlooked can cause serious problems later on. The centerpiece of the HIRE act provides a payroll tax holiday by allowing qualified employers an exemption for paying the Social Security tax of 6.2% on certain new hires through the end of 2010. However, while this is rather simple to understand, the implementation will be tricky. Law firm employers must understand the fine print on several eligibility rules like hiring only employees for new positions, not preexisting ones. The new hire does not have to be a full-time employee (there's no minimum hour requirement), but the new hire must not take the place of an existing employee unless that employee is terminated for cause or leaves

continued on page 2

In This Issue

Tax Highlights

continued from page 1

voluntarily. Also, the new hire can be an employee who was previously laid off by the employer, but the new hire must not be related to the employer or own (directly or indirectly) more than 50% of the business.

In addition, systems must be produced to document facts such as having employees sign an affidavit (Form W-11) certifying they have not worked more than 40 hours in the 60 days before their hiring date. The reason is because in order to qualify, a worker must be hired after Feb. 3, 2010, and before Jan. 1, 2011, and must have been unemployed (defined as not having worked more than 40 hours) for the 60-day period ending on his or her start date.

The maximum value of this benefit per employee is $6,621.60, since wages in excess of $106,800 aren't subject to the Social Security payroll tax. Law firm employers also need to keep in mind that since payroll tax paid is deductible as an ordinary and necessary business expense, law firm employers will have to take into consideration a smaller business expense deduction on their 2010 tax returns when utilizing this new abatement.

Please note that law firm employers generally can't take both payroll tax forgiveness and the Work Opportunity Tax Credit up to $2,400.00 for the same employee for the same year. Law firm employers can, however, elect to pay the Social Security tax so that they can take the credit if, for example, the credit would provide a greater tax benefit.

Revised form 941s are also being drafted by the IRS, and all law firm employers must use the new form 941s for the second quarter of 2010 even if they do not qualify for the abatement. In addition, any amount of abatement attributable to wages paid from March 18, 2010 through March 31, 2010 will have to be credited in the second quarter on the new form 941.

Retained Worker Business Credit

As an added incentive, the HIRE act provides law firm employers with the ability to take a tax credit for each employee who qualifies for the payroll tax abatement above and is retained for 52 consecutive weeks. This retained worker credit can be taken along with the Work Opportunity Tax Credit. The tax savings for this retained worker credit per qualified retained worker is equal to the lesser of 6.2% of the wages paid to the worker in 2010, or $1,000. Law firms will have to implement sufficient reporting mechanisms to monitor and track mandated salary and employment length requirements for the tax credit. The reason is because during the last 26 weeks of the 52-week period, the worker must be paid wages equal to at least 80% of what he or she was paid during the first 26 weeks. Also, no partial credit is available if the worker leaves before the end of the 52-week period, even if the departure is voluntary. Because of the 52-week requirement, law firm employers generally won't enjoy the benefit from this credit until they file their 2011 tax returns.

Section 179 Expensing

Under the 2008 Economic Stimulus Act, the Section 179 expense deduction limit increased to $250,000 and the investment amount at which the Section 179 deduction begins to phase out increased to $800,000 in order to encourage law firms to invest in certain business assets and capital improvements. The HIRE act extends the increased Section 179 limit for one year. Businesses that are on a fiscal year ending in 2011 will have until the end of the fiscal year to place the assets in service to avail themselves of the increased expensing. The Section 179 expensing election allows law firms to take a current deduction for newly acquired assets that otherwise would have to be depreciated over

continued on page 6

Richard H. Stieglitz, CPA, a member of this newsletter's Board of Editors, is a Tax Partner and **Tamir Dardashtian, Esq.,** is a Tax Manager in the New York accounting firm of Anchin, Block & Anchin LLP. Mr. Stieglitz and Mr. Dardashtian can be reached at 212-840-3456 or via e-mail at rstieglitz@anchin.com and tamir.dardashtian@anchin.com.

LAW FIRM PARTNERSHIP & BENEFITS *Report* ®

Law Firm Partnership & Benefits Report® (ISSN 1061-9410) is published by Law Journal Newsletters, a division of ALM.
Telephone: (877) 256-2472,
Editorial e-mail: wampolsk@alm.com
Circulation e-mail: customercare@alm.com
Reprints: www.almreprints.com

Law Firm Partnership & Benefits Report 023147
Periodicals Postage Pending at Philadelphia, PA
POSTMASTER: Send address changes to:
ALM
120 Broadway, New York, NY 10271

Published Monthly by:
Law Journal Newsletters
1617 JFK Boulevard, Suite 1750, Philadelphia, PA 19103
www.ljnonline.com

ALM
An Integrated Media Company

Time for a Common Lateral Partner Questionnaire

By Janet Markoff & Sarah Levinson

According to consultants and the legal press, 2009 was the Year of the Lateral, with a record number of lateral partner moves in the AmLaw 200. In the 12 months ending Sept. 30, 2009, 2,775 partners left or joined the biggest firms in the country, a 10.6 % increase over the previous year. As reported in *The American Lawyer*, an ALM sister publication of this newsletter, litigation represented 17% of the moves, followed by banking and finance (15%), corporate (10%), intellectual property (9%), and bankruptcy (4%). The high percentage of banking and finance moves was directly connected to the closing of Thelen and Thacher Proffitt & Wood, which left many finance partners searching for new homes.

This year is likely to be another record year for law firm lateral hiring. In periods of economic flux, one of the principal ways to increase law firm revenues is to hire qualified lateral partners with substantial practices. As Greenberg Traurig's CEO Richard A. Rosenbaum told *The American Lawyer* ("Lateral Partner Moves Spiked in 2009, New Report Shows," February 2010), "It's been a time of opportunity. The general pool of talent is at a level we've never seen before." There is also a new subcategory of laterals in the market — *i.e.*, seasoned partners who had previously been reluctant to consider moving, but are now concerned about the financial viability or management of their firms.

The Process

As most of us know, when a partner decides to explore new opportunities, he or she will typically interview with several firms. The firms will, in turn, conduct due diligence on the prospective candidate. Today, law firms are understandably more concerned than ever about what a partner will actually be able to bring to the table. The vetting process became much more demanding last year, with a partner's reputation, book of business, client relationships and projected following, personal style, and global connections/experience all playing a role. After preliminary meetings with a candidate, many firms attempt to obtain much of this information by asking candidates to complete a Lateral Partner Questionnaire (LPQ). Many lateral partner candidates, however, are wary of this document for a number of reasons, not the least of which is the time necessary to complete it.

A Necessary Evil

In our combined 37 years in the legal search field, we have met scores of partner candidates and law firm hiring professionals who view the LPQ as a necessary evil. Yes, it is essential to obtain the information that is requested in most LPQs, but why isn't the process easier? Why is the form so arduous? While few candidates dispute the propriety or necessity of providing the information, the question on everyone's mind is how to streamline the process so it becomes more efficient and less daunting.

Another set of questions has to do with the timing: When is the best time to ask the candidate to fill it out? And what can law firms do to ensure that the LPQ does not become the largest hurdle in the lateral hiring process?

These concerns and the increasing time demands being put upon partners (since most partner candidates hold onto their current jobs before moving to a new firm) have led us to the conclusion that the answer might lie in the creation of a Common LPQ.

A Common Form

If you, like us, have had the opportunity to see a number of different LPQs, you have realized how out-of-hand the situation has become. Some questionnaires are brief, while others look like "War and Peace." We are suggesting that firms consider adopting a common design — to save time for the firm and the partner candidates, while still ensuring that the most necessary data is obtained.

As a source of inspiration, all we need to do is turn to the academic world. After noticing the same problem with college applications, 15 private colleges established the Common Application Association in 1975 to create a common, standardized college application form. With support from the National Association of Secondary School Principals, the organization has grown exponentially. By the time of the next count (July 2010), 414 colleges and universities will have accepted the Common College Application. According to Admission Scoop.com, "Students find that the Common App saves time by reducing redundant entry and allowing them to easily submit the same essays to multiple institutions. Increased use of the Common App is considered a key factor in significant increases in applications to certain member colleges in recent years." Earlier this year, Columbia University announced it would accept the Common App, the last holdout of the Ivy League.

No law firm wants a prospective lateral candidate to delay or terminate the interview/hiring process because of an unwieldy or demanding LPQ. If a standard element of a process is an impediment, the process should be refined. A Common LPQ would address three typical problems with most of the current forms:

Time

A partner with a thriving practice has limited spare time. Navigating the time commitment of the interview process can be quite challenging. To also ask him/her to compile extensive historical data on revenues, billings, compensation and conflict information can often be burdensome. The partner can not delegate this task.

Different Metrics for Different Firms

The time needed to complete an LPQ is compounded by the variety of metrics used by many firms. For example, the candidate's current firm may have a compensation system that differs from the interviewing

continued on page 4

Janet Markoff is a Partner and leader of the Partner Practice Group in the New York office of Major, Lindsey & Africa. She can be contacted at 212-421-1443 or jmarkoff@mlaglobal.com. **Sarah Levinson** is the Recruiting Manager in the New York office of Holland & Knight. She can be contacted at 212-513-3315 or sarah.levinson@hklaw.com.

Lateral Partner LPQs

continued from page 3

firm. Accordingly, the data collected at a firm with lockstep compensation may be different that that collected by a firm with formulaic-based compensation. Additional time may be needed to locate the data. Also, with certain compensation structures, the requested data might not be readily available to the lateral partner candidate. Although each firm has its own form and manner of expressing the data, most firms require essentially the same information. If a standard form were used, firms could translate the data provided to correspond with their particular metrics. The firm would thus share the burden of data conversion with the candidate.

Timing

The timing of when the information is requested can be a delicate dance between the parties. A firm may find it difficult to conduct meetings in sell mode without knowing the extent of a partner's practice. Similarly, a candidate may be reluctant to share "confidential" information until he/she has reached a significant level of interest.

SOME SOLUTIONS

Very few candidates are comfortable submitting a detailed, 10-page LPQ after the first or second meeting. A middle ground would be a Common LPQ that asks fewer questions. This document should be easier to request earlier in the process since it requires less work and more focused and limited information.

If the candidate and firm determine they would like to take the next step in the process after the initial data is provided and reviewed, the Common LPQ Supplement would then be provided, which would request conflict information, references and permission for background checks. This supplemental step is also part of the process utilized by the colleges and universities that participate in the Common Application program. When the situation calls for it, they are free to use an additional form with questions that either take more time to answer or do not have "common" responses.

The Basic Content

Many firms that use an LPQ as part of the interview process require the same information from prospective laterals. This data would thus represent the core content of the Common LPQ:

1. A resume or biography that includes a comprehensive description of legal and non-legal employment in reverse chronology, as well as educational background, including degrees, academic awards and publications. The resume should also include, or attach separately, a list of representative matters.
2. *Economic Data*: A three-year annual history of originations, collections, realization rates, billable and non-billable hours, billing rates and compensation. The form should clarify which billings are originations and which billings are those of the responsible partner (but not necessarily originations). In addition, it is important to specify those clients and/or matters likely to follow the partner should he or she leave.
3. *Clients*: A three-year annual history of each client and their respective billings, collections and realization rates. Revenue projection for the first year of employment, including: a) minimum; b) reasonably expected; and c) optimistic.

The Common LPQ Supplement, which would be filled out later in the hiring process, would typically request the following data:

1. Conflict information.
2. Professional and personal references.
3. A signed permission form for a criminal background check. (Of course, this is subject to state-by-state restrictions on what information can be disclosed.)

CONCLUSION

Adoption of a Common LPQ, using a universal form, would help simplify the process and save time that prospective lateral candidates could otherwise devote to their busy practices. If firms agree to use the same form, a candidate will not be put off by one firm's more extensive document. Much like the student who discovers the long essay question that no other college application requires, our goal is to prevent partner candidates from narrowing or slowing their search due to a burdensome LPQ. The Common LPQ is an approach truly worth considering — a means to eliminate obstacles to a successful match.

—❖—

New Legal Workplace

continued from page 1

out a shingle or go with a large firm — when they start hiring again. If you don't care about compensation, you can work for the Federal Government or get an in-house counsel position — when they start hiring again. If you want to be compensated on the higher end, developing business is going to be a mandatory requirement. The good news is that it's not all that hard. The trick is to get everyone in the organization to realize that they are ALL in sales, from the receptionist to the paralegals to the facility manager. Every person is a reflection of your organization and they must always be looking for business opportunities.

SELF-SABOTAGE IS A LUXURY YOU DON'T HAVE

There are a number of behaviors in which professionals indulge that will be less tolerated as financial pressures mount. Certain activities in your day result in nothing of value and there is nothing you can do about it — like potential client meetings. These are built into the price of business. But other activities that simply result in wasted time, and are entirely self-generated, must be eliminated. For example, the act of interruption results in millions of dollars of lost revenue every year. The reason is because it prevents pure focus and concentration that is required to generate billable product. There are times when interrupting

continued on page 8

Paul Silverman is the President of Integra Workshops. His legal industry clients include in-house counsel at several Blue Chip Corporations, the U.S. Dept. of Justice and commercial firms.

It's Time for Some Attention to Partners

By Steve Armstrong

It is hard to spot amid all the publicity about new models for managing associates, but a second change in how firms manage their talent is also underway. After years of focusing on associates, law firms are beginning to realize that they need to pay more attention to their partners. The change has been slow, and most firms still take a "sink or swim" approach to their partners' careers. But more firms are concluding that the old approach has become too risky, because the waters in which their partners swim are too rough and their individual success is too critical to the firm's overall success. Over the next decade or two, the firms that act on this insight are likely to gain a significant competitive advantage.

If a firm wants to pursue this advantage, what should it do? To answer that question, this article draws on a recent survey of more than 500 partners in 44 major firms in the U.S. and Canada whom their firms identified as successful. (The survey was conducted by Tim Leishman and Steve Armstrong of Firm Leader and David Cruickshank of Kerma Partners.) It explored the participants' development after they became partners, the skills they regarded as most important to their present and future success, and the obstacles they saw in their paths.

Focus on Developing Partners, Not Just Managing Them

As firms grow, they tend to create more elaborate systems for monitoring their partners' performance: evaluation processes tied to their compensation; frequent monitoring of their hours, revenues, and billing discipline; mandatory annual plans; and the like. As useful and necessary as those processes are, they are designed primarily to see whether partners are succeeding, not to help them succeed.

Recognize the Difference Between Developing Partners And Developing Associates

For associates, the primary goal is to increase their proficiency across the range of skills that an apprentice lawyer should master. For partners, the primary goal is to increase their contribution to the firm's success. As a result, the most successful "training" programs for partners are those that help the participants to decide how they can expand their practices — and, perhaps, contribute to the firm in other ways — and then help them to follow through on their plans. Along the way, the programs will also teach skills that can help the participants reach their goals. But the focus is on channeling and supporting the partner's drive to succeed, not on "training" them across a generic range of partner competencies.

Typically, this kind of program unfolds over several months. It begins by asking the participants — before they ever gather in a room together — to walk through a structured process for analyzing their practices, defining their professional goals, deciding the steps they should take to reach those goals, and understanding the new habits or skills they may have to develop to take those steps. The program's workshops then help them to refine those plans, begin to act on them, and collaborate with other partners who can help them. The workshops also focus on skills, but on ones that are specifically relevant to the program's audience. (See below for some examples.) Most importantly, the program will provide ongoing support and discipline over several months to increase the likelihood that the participants will actually follow through with their plans. That support can take several forms: scheduled check-ins with external coaches, meetings with a practice-group leader, and periodic meetings among the participants.

Recognize That a Partner's Career May Pass Through Distinct Stages

Each stage requires new goals and new skills. During a 30-year career, many partners pass through at least three stages:

1. When they first become partners, they learn how to act like partners rather than like first-rate associates. That change often requires changes not only in how they approach business development, but also in how they deal with clients and how they manage associates.
2. Once they have established themselves as partners, many go on to build "leveraged" practices that support more of the firm's lawyers. To make this transition, they need a strategy for expanding their practice, more skill in business development, more ability to manage work even when they have little daily contact with it, and, often, more skill in collaborating with other partners on whose cooperation they must rely to develop business.
3. Later in their careers, some partners go on to assume broader roles in the firm: helping to build practice groups or offices, or otherwise expanding their contributions beyond the scope of their own practices. This transition also requires its own set of skills: for example, devising strategy, creating support for a goal that involves uncomfortable change, and handling conflicts effectively.

So far, the law firms that have focused on their partners' development are focusing primarily on new partners. (There are exceptions: programs for group and office leaders, for example, and business-development programs for a range of partners.) This focus makes sense as a starting place because the transition from associate to partner can be difficult. But it should not be the exclusive focus. In fact, for many firms, the more important focus may be on the transition to a leveraged practice: the more partners who make that transition, the stronger the firm will be.

Pay Attention to All the Factors That Influence Partners' Development

When a firm starts to invest more in its partners' development, its first

continued on page 6

Steve Armstrong is a principal of Firm Leader (www.firmleader.com), which provides consulting and training services with a focus on partner development, and the principal of Armstrong Talent Development (www.armstrongtalent.com).

Attention to Partners

continued from page 5

step is usually to create training or coaching program. As effective as these programs can be, they may ultimately be less important than other, more difficult steps. In the survey on which this article draws, partners were asked whether their firms' culture or systems impeded their development. Almost 40% answered "yes" — and these were partners whom their firms regarded as successful. Among established partners who were expanding their practices, the percentage rose to 50%. Their complaints focused on two issues:

- Compensation criteria that discouraged collaboration and encouraged the hoarding of work and clients.
- Not enough practical support — rather than just advice — from senior partners to help them build their practices. In some firms, senior partners seem to take seriously their responsibility for helping the next generations of partners: They pass on client relationships and invite other partners into new business-development opportunities. In other firms, they seem to provide less of this critical support.

Tackling these two issues is more difficult than creating a training program but, for many firms, also more important. A third issue also warrants almost equal billing:

Many firms now have an annual planning process for their partners. Typically, it requires each partner to lists goals for the coming year and is linked to the firm's compensation system. Often, these processes are less useful than they could be. A key step for improving them: involve practice leaders or other senior partners in shaping the goals — not only in reviewing them after they have been written — and in following up through the year as the partner moves toward a goal. Whatever other tasks are on a practice leader's list, this is one of the most important. Can a practice head pay that much attention to every partner every year? Not unless the group is small. But he or she can pay more attention to some partners each year, especially those who are at key transitional points in their careers. Many practice leaders tend to focus on problem partners and stars, while not spending enough time with those who are doing well but have the potential to do even better.

Conclusion

The best strategy for speeding partners' development will vary across firms, depending on their size, culture, and practices. And some firms — those with stable, lucrative niches, or those with smaller partnerships and rigorous selection processes — may rationally decide that their partners are already performing as well as they need to. For the rest, however, there is an opportunity to be seized.

—❖—

Tax Highlights

continued from page 2

a number of years. This election can be claimed only to offset the business net income, not to reduce net income below zero.

The HIRE act does not extend the first year 50% bonus depreciation to certain property acquired and placed in service in 2010.

The following types of property are qualified for this Section 179 expensing:

- Tangible property with a recovery period of 20 years or less;
- Computer software purchased by the business;
- Water utility property; and
- Qualified leasehold improvement property.

Because the Section 179 limit extension can provide large 2010 deductions, law firms may want to consider making major asset purchases this year if their business would qualify for this deduction.

Health Care Reform Acts

Tax Credits for Small Businesses

The new health reform law gives a tax credit to certain small employers that provide health care coverage to their employees, effective with tax years beginning in 2010. Small employers that provide health care coverage to their employees and that meet certain requirements ("qualified employers") generally are eligible for a Federal income tax credit for health insurance premiums they pay for certain employees. Generally, in order to be a qualified employer, the employer must have fewer than 25 full-time equivalent employees for the tax year and the average annual wages of its employees for the year must be less than $50,000 per full-time equivalent employee. The employer must pay premiums for each employee enrolled in health care coverage offered by the employer in an amount equal to a uniform percentage (not less than 50%) of the premium cost of the coverage.

For tax years beginning in 2010 through 2013, the maximum credit is 35% of the employer's premium expenses that count toward the credit. After 2013, a maximum credit of 50% is available for two years for employers that purchase coverage through a state insurance exchange and contribute at least 50% of the total premium. The full credit is available for small employers with 10 or fewer employees and average annual wages per employee of less than $25,000. Partial credits are available on a sliding scale to businesses with up to 25 employees and average annual wages of less than $50,000.

Codification of the Economic Substance Doctrine

The Health Care Reform Act codifies the economic substance doctrine and applies to transactions entered into after March 30, 2010. The economic substance doctrine is a judicially developed doctrine under which the anticipated tax benefits from a transaction may be denied if the transaction does not result in a meaningful change to the taxpayer's business purpose and/or economic position other than reducing federal income taxes. This result can occur even if the transaction otherwise satisfies all statutory and administrative requirements.

This act provides that in the case of any transaction "to which the

continued on page 8

Leadership Lessons From a Civil War Colonel

By Mark Beese

Joshua Lawrence Chamberlain was 34 years old when he left a prestigious and safe professorship at Bowdoin College in Brunswick, ME, in 1862. Chamberlain was married with five young children. He earned two university degrees, one from Bowdoin and a graduate theology degree from Bangor Theological Seminary. He spoke six languages and taught college philosophy. He was passionate about the ever-expanding United States of America and was moved to action when he learned of the secession of the Confederate States.

Though he lacked a military education and background, Chamberlain left Bowdoin to join the 20th Maine Infantry Regiment, which was about to depart for Washington to join the Army of the Potomac in the War Between the States. Initially, he was assigned the rank of Colonel, but because of his lack of experience, he asked to start as a Lieutenant Colonel. Within months, his brigade fought in some of the bloodiest battles in the Civil War, including those in Antietam and Fredericksburg. But it was at Gettysburg, the high-water mark of the war, that now Colonel Chamberlain met his greatest challenge.

Chamberlain's 20th Maine was charged with holding the left flank of the mile-long line of Union soldiers on a hot July day in a farm field just outside of the small town. Chamberlain and his men successfully defended a hill called "Little Round Top" that overlooked what is now called "Devil's Den" in one of the most intense battles of the war. The fight at Little Round Top was pivotal. Had Chamberlain failed, many believe the outcome of the war and the fate of the nation would have been very different.

Mark Beese is President of Leadership for Lawyers, LLC, a consultancy that helps lawyers in the areas of business development, marketing and leadership development. Web site: www.leadershipforlawyers.com.

Lessons for Law Firm Leaders

Law firm leaders can learn a lot from Col. Chamberlain. When he looked in the mirror, Chamberlain saw himself first as a leader. He could have identified primarily as a professor, academic, language whiz-kid, or even a father and husband. Instead, he risked those roles that were most comfortable and safe for that of Leader, focused on preserving the integrity of the union.

Like Chamberlain, many lawyers and staff in leadership roles have no formal training in management and leadership. Still, we're called upon to lead people through challenging times of change. We need to identify ourselves primarily as leaders, focused on the leadership roles and opportunities at our firms. Too often, we get caught up with "administrivial" tasks, aimed at preserving the status quo. Short tenures of managing partners, practice group leaders and marketing staff make it difficult to effect lasting change. The matrix/non-hierarchical structure of most law firms makes it easy for people avoid being a leader — attorneys are expected to bill hours and please clients; staffs are rewarded for quality and production (but not leadership). Leadership is risky business, but positive change doesn't happen without leadership. Leadership doesn't happen unless people look in the mirror and first see themselves as a change-agent, a motivating force, an influencer — a leader.

Management guru Peter Drucker once said, "Only three things happen naturally in organizations: friction, confusion and underperformance. Everything else requires leadership."

'Walking the Talk'

Chamberlain "walked the talk." He modeled the way. He was not a career officer like Grant, Meade or McClellan. He did not graduate from West Point or Annapolis. He led alongside his troops, not from behind. Law firm leaders are most effective when they set the example, are inclusive of different levels of attorneys and staff, and focused on creating a team *esprit-de-corps* to effectively serve clients. This is especially true when considering how to engage "Gen-Y" workers. Like Chamberlain, we need to find our "leadership voice" that aligns our values with our actions.

Chamberlain, as seen in his plea to the mutinous men of the 2nd Maine, was skilled at enlisting others in a common vision. Like a litigator, he used his gift of oration to communicate his deep understanding of and empathy with his followers' situation. He laid out a clear, compelling and challenging vision — hold the line and preserve the Union. And he affirmed shared values of freedom, selflessness and courage.

A Common Vision

Law firm leaders need to practice the same skill of enlisting others in a common vision using understanding, empathy and affirming shared values if they hope to change unproductive elements of firm culture and individual behavior. Engaging others to follow a common vision in a law firm often resembles negotiation. It requires an exchange of ideas; a give-and-take dialogue that often reshapes the vision and direction. Understanding others' interests (sometimes called WIIFM — What's In It For Me) before the dialogue is critical. Engaging others is best done one-on-one, not in large groups. The goal is to align interests so that the follower believes it is in her/his best interest to support the vision. Affirming shared values and experiences provides a platform for discussing a vision for the future.

Conclusion

Chamberlain's leadership did not go unnoticed. At the end of the War, General Grant rewarded Chamberlain with the honor of accepting the formal surrender of the Army of Northern Virginia outside the court house in Appomattox, VA. Upon returning to Brunswick, he was nominated and elected Governor of Maine. Following his term, he served as President of Bowdoin College for many years.

—❖—

New Legal Workplace

continued from page 4

colleagues and co-workers is important, but it's generally 20% of the time it's actually required. One of our jobs as seasoned professionals is to create an environment (*i.e.*, rules and routines) that empowers us and our teams to work at our full potential by generating an environment of full engagement and concentration. You don't see Olympic athletes checking their BlackBerries before an event — you should not permit random and frequent interruptions in your workday either.

Make KAIZEN (Continual Improvement) Your Mantra

Change is one of the only phenomenons we can bet on. Approximately a quarter of the professions that will exist ten years from now don't exist today — what are you doing to prepare for this economic opportunity shift? Attorneys that are using the same skill set they used ten years ago are "falling stocks" within their organizations. You prepare for the future by integrating personal continual improvement on a daily basis. Upgrading your skill set is separate from CLE, which also must be built into your daily/yearly planning. Because KAIZEN is not legally mandatory, it's easy to get lost in the shuffle. At the end of the day, though, your currency is your "currentcy." Your future customer base will require future skills and you must prepare for those skills by engaging in proactive, rather than reactive, learning. In his book "Outliers," Malcolm Gladwell expertly explains the dramatic rise and success of firms like Skadden Arps and Wachtell Lipton in the second half of the 20th century by having the right legal skill set at the right time. Do you have the right skill set for the first half of the 21st century?

Command of the Work Flow

None of these guideposts will do you any good until you have complete command and control over your information and work flow/process. The first step in any real LEAN Six Sigma or performance improvement program is to make sure you are in control of your work environment and that it's not in control of you. I've worked with many attorneys who don't know the color of their furniture because it's been covered with Redwelds for so long. The bottom line is that attorneys in the new economy will be expected to deliver more "value" than ever before. Set yourself up for success by setting your office and behaviors up for success.

—❖—

Tax Highlights

continued from page 6

economic substance doctrine is relevant" the transaction shall be treated as having economic substance only if: 1) the transaction changes in a meaningful way (apart from federal income tax effects) the taxpayer's economic position; and 2) the taxpayer has a substantial purpose (apart from federal income tax effects) for entering into such transaction.

While the new statute specifies the above requirements that must be met in order to have economic substance, it does not specify when these factors must be applied. It merely states that the determination of whether the economic substance doctrine is relevant to a particular transaction will be made in the same manner as if the new statutory economic substance provision had not been enacted. Accordingly, taxpayers are left with substantial uncertainty as to the circumstances in which this new statute will be applied.

The Act includes a new 40% liability penalty that will be imposed on underpayments resulting from transactions found to lack economic substance or failing to meet the requirements "of any similar rule of law." The penalty is reduced to 20% of the underpayment if the transaction is disclosed by the taxpayer.

The new statutory economic substance provision sets another hurdle to tax planning for attorneys and their business clients. This provision must be contemplated by attorneys when structuring legitimate business transactions.

Additional 2013 Medicare Taxes

According to the Health Care Reform Acts, starting in 2013, individuals will pay an additional 0.9% Medicare tax (2.35% instead of the current 1.45%) on the earned income in excess of $200,000 ($250,000 for married couples filing jointly). In addition to that tax, those individuals will also pay a new, 3.8% Medicare tax on the lesser of net investment income (such as interest, dividends, rents, royalties and gains from disposing property from a passive activity) or the excess of modified AGI over the threshold amount above. The tax doesn't apply to retirement plan distributions.

Penalties/Taxes Beginning in 2014 and 2018

According to the Health Care Reform Acts, starting in 2014, individuals who fail to maintain minimum essential health care coverage will be assessed a penalty that will be the greater of $95 per person or 1% of household income. Those amounts increase to $325 or 2% of income in 2015 and $695 or 2.5% of income in 2016. In addition, a family's total liability is limited to three times the applicable dollar amount ($285 in 2014, $975 in 2015, and $2,085 in 2016).

Beginning in 2018, a 40% nonrefundable excise tax will be imposed on high-cost group plans. The tax applies to annual premiums in excess of $10,200 for individual coverage and $27,500 for family coverage (excluding stand-alone dental and vision plans). The thresholds are higher ($11,850 and $30,950, respectively) for retirees and employees in certain high-risk professions. These amounts will be indexed for inflation. Since the excise tax will be imposed on insurance carriers, the cost will likely be passed along to law firm employers or employees in the form of higher insurance premiums.

—❖—