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## Do's And Don'ts For Disaster-Free Discounting

By **Jake Simpson**

Law360, New York (May 28, 2014, 7:53 PM ET) -- The trend of law firms providing discounts off their hourly billing rates shows no signs of letting up, and legal experts say firms would be wise to be proactive, yet avoid indiscriminate discounts regardless of practice area.

Clients have been increasingly aggressive in demanding discounts off law firms' standard billing rates, often referred to as published rates or rack rates, across all matters and practice areas. A recent billing survey conducted by Law360 and BTI Consulting Group Inc., BTI's **Billing Rate Reference 2014**, found that firms are offering average discounts of 15 percent off their rack rates, with some firms discounting as much as 30 percent.

"Our stats show that about 75 percent of clients say they're getting discounts," BTI President Michael Rynowecer said. "Half of a firm's most important matters — or more — are now subject to rate negotiation."

The discounting trend, which some analysts said began in the mid-2000s, has accelerated since the financial crisis of 2008 and 2009 and shows no sign of slowing down. Here, legal industry participants and outside experts offer several tips to responsibly incorporate discounts into your firm's regular billing practices.

### **Do Take Proactive Steps**

Angela Hickey, executive director for Levenfeld Pearlstein LLC, told Law360 that it is now "standard operating procedure" for clients to reach out to law firms and ask directly for a discounted rate. As a result, her firm seeks to initiate the conversation on potential discounts rather than waiting for clients to bring it up.

"The issue is not going away, so have the conversation on the front end and really understand what the client is looking for," she said. "Having conversations on the back end is the worst possible time to have them, because by then it's too late."

Hickey advised firms to analyze their rates and billing practices for existing clients before opening a discussion about potential discounts.

"It's really an advantage when you have an existing relationship with the client," she said. "In an ideal world, the law firm should be proactive in the discussion and be able to say, 'We've been analyzing your legal spend, and here's what we can do to manage costs a bit better.'"

### **Don't Expect to Gain Market Share**

Though discounting is in most cases a necessary tool for law firms to work with their clients, it is not likely to lead directly to market share gains, according to Rynowecer. BTI's president said that discounts are rarely effective at grabbing market share from competing law firms,

even in the current slow-growth legal industry market.

"Fundamentally, clients are paying pretty substantial rates," he said. "At the end of the day, it's the rare client that will actually be swayed to change law firms because of a cheaper billing rate."

Rynowecer added that because the cost of switching law firms can be as high as 30 percent of a company's existing outside counsel fees, a company "would have to be offered an enormous discount" to switch firms. The new law firm might then be stuck with an unpalatably low rate that it would have to negotiate its way out of over time.

### **Do Revisit Discounts Regularly**

Firms that are already implementing a wide-ranging discount policy are frequently revisiting that policy on a client-by-client basis. Typically, there is an informal understanding between law firm and client that a discounted rate structure will remain in place for short period of time — usually a year — before it gets revisited, according to Rynowecer.

Hickey said that the length of an agreed-upon discount rate usually depends on the length of the relationship between firm and client.

"With a longer-term client, you would have a longer-term lock of a discount rate," she said. "With a new client, it might be only six months."

### **Don't Discount Indiscriminately**

Industry experts cautioned that law firms should not look to discount every matter or otherwise slash rates across the board, avoiding a "race to the bottom" that cripples the firm's ability to make a profit.

Specialized work such as intellectual property litigation matters or bet-the-company work has not been hit by as much rate pressure and remains somewhat protected in companies' outside legal spending budgets, said Kent Zimmermann, principal of industry consultant Zeughauser Group LLC.

### **Do Keep in Mind the Downside of Nonspecialized Work**

On the other end of the spectrum are routine matters, particularly in litigation, that have become subject to the greatest price pressure from clients. In some of these cases, discounts are now a required component of securing new work, said Stephanie Scharf, partner with Scharf Banks Marmor LLC.

"A lot of very large companies simply won't give work unless it's discounted, period," Scharf said. "There are very few matters that are so essential to the life of a company that the matter could not withstand a discount."

### **Don't Just Hope for the Best**

A small minority of law firms still do not discount under any circumstances and view their commitment to their published rates with pride, experts noted. In the same vein, some profitable companies have not been nearly as aggressive in pushing for discounts. But overall, the demand for discounted rates has reached the point where law firms cannot ignore the issue, according to Hickey.

"The 'hold-your-breath strategy' is no longer a viable option," she said. "Discounts are part of the menu, and I don't think that's going to change anytime soon."

Hickey also noted that more law firms are including executive directors such as herself in rate conversations with clients, rather than having a senior partner handle the discussion alone.

Discounting has moved from an accommodation by law firms to a demand by clients over the past decade, a trend that has accelerated since the financial crisis. Law firms that are unwilling or slow to codify how discounts factor into their overall billing practices will be at a disadvantage to clients that are used to negotiating rates with all their suppliers and service providers.

--Editing by Katherine Rautenberg.

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