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Law Firms Face Gray Area as Boomers Age

As baby boomers hit their 60s, Am Law 200 firms try to keep the most experienced and talented ones from walking out the door

Elizabeth Goldberg
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Getting old has never been so good. If you're healthy and productive and eager to keep working, there's a law firm out there that wants you. Need work/life balance? No problem. Fancy setting your own schedule? Done. No matter that you're an aging baby boomer approaching senior status. You can demand -- and get -- flexibility.

That's what Kenneth Adams did. Three years ago, Adams, then 58, had been working at Dickstein Shapiro at full velocity for 30 years and was one of the firm's most highly compensated partners. He led a unique practice in complex antitrust litigation for large corporate plaintiffs, and he loved the

element of risk. But after recovering more than \$2 billion for 150 companies in a multiyear case against an international vitamin cartel, Adams needed a break. So he took two months off in 2004, he says, "just to get reacquainted with my family and chill out a bit."

At first, Adams figured he would get bored soon and be itching to get back to work. But that didn't happen. "I enjoyed slowing everything down and having breakfast with my wife," he says. "Until I left, I had no concept of how much stress I'd been accustomed to living with." He wasn't ready to retire altogether, but Adams knew he wanted to make a significant change.

So he arranged a meeting with Dickstein's managing partner, Michael Nannes. "I told him, 'I want to reduce my hours enough so that I can lose the stress. I want to turn the practice over. I want to try some new things before I fully retire. And, I want to be de-equitized. The only way I'll feel free is if I am not comped at the same level.'"

Today, both Adams and Nannes say the arrangement has succeeded. Adams no longer has management responsibilities, and three junior partners have taken over leadership of the practice. He still advises the team and heads up a few litigation matters, but mostly he focuses on helping the firm create alternative fee arrangements. Instead of billing 2,000 hours a year as he used to, Adams now books roughly 1,300. That leaves him plenty of time to pursue his other high-risk passion: tournament poker. He competes in seven competitions a year, including the World Series of Poker in Las Vegas.

Welcome to the future of retirement as reconceived by the baby boomers -- the 78 million Americans born between 1946 and 1964. As this cohort ages over the next two decades, seniors will make up a larger percentage of the work force than ever before, including at law firms. According to Hildebrandt International, boomers now constitute 70 percent of law firm partners (the study was not limited to Am Law 200 firms). Boomers will not only challenge traditional notions of when partners retire, but also how they do so.

Already, retirement age is a hot topic in law firms, especially as mandatory retirement policies have increasingly come under attack. In January the New York State Bar Association issued a report opposing mandatory retirement on the grounds that it is archaic and unfair. In August the American Bar Association adopted the New York Bar report and recommended that all firms end forced retirement. And in October, Sidley Austin settled a long-standing age discrimination case with the Equal Employment Opportunity Commission that included a promise to revoke the firm's mandatory retirement policy.

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As part of this year's survey of managing partners, we asked leaders of Am Law 200 firms how concerned they are about the aging of the bar. Thirty-eight percent of leaders say that it is a significant management issue. And well it should be. In 69 percent of firms, 20 to 39 percent of the equity partners are age 50 or older. At 23 percent of firms, more than 40 percent of the partnership is 50 or older. In follow-up interviews, managing partners say these demographics raise two key questions: how to accommodate boomers who want to keep working and how to ensure a smooth succession to the next generation.

"The attention being paid to this among the professional community hasn't been lost on us," says Allen Fagin, managing partner of Proskauer Rose. "Frankly, our own development as a firm is tied to the issue of partner retirement and succession." Retirement age at Proskauer is 68, but a partners committee is reviewing all aspects of the firm's policies on the subject. Says Fagin: "We need to look very carefully at whether our existing procedures make sense."

POLICIES IN FLUX

Among Am Law 200 firms, nothing's uniform about retirement policies. According to the survey, 64 percent have a mandatory retirement age, ranging mostly from 65 to 70. Meanwhile, 36 percent of firms place no limits on age.

Of course, baby boomers are divided as well. While some partners want to spend their golden years fully enmeshed in legal practice, others want to retire early enough to pursue new professional or personal goals. A recent poll of 521 lawyers in management positions by Altman Weil found that 27 percent plan to retire before 65; 29 percent at 65; and 33 percent after 65 or never.

Several large firms have responded to the varied expectations and desires of an aging work force by moving away from hard-and-fast mandatory retirement policies. Just last month, for instance, Kirkpatrick & Lockhart Preston Gates Ellis announced that it would stop requiring equity partners to step down at age 70. Our survey found that 28 percent of leaders at firms with mandatory retirement are considering abandoning the requirement. (Only one firm reported considering adding an age cap.) And Altman Weil's poll found that 46 percent of managing partners at firms with mandatory retirement disagree with the approach. As partnerships age, Altman Weil consultant James Cotterman predicts, fewer firms will require mandatory retirement.

The recent settlement by Sidley Austin may hasten the demise. In 2005 the EEOC filed a complaint against Sidley after the firm forced 32 partners to give up equity status because of their age. The case turned on whether these partners could be considered employees -- and therefore covered by the federal Age Discrimination in Employment Act. In addition to making a record payout of \$27.5 million to the former partners, Sidley also agreed that, for the purposes of the ADEA, these individuals were employees.

In interviews, several managing partners of Am Law 200 firms dismissed the possibility that their firm could face similar liability. Sidley, according to court documents, is run by a self-perpetuating executive committee that makes all decisions about hiring, firing, promotion and compensation -- a particularly top-down approach. (A source familiar with the firm's governance says the rank and file do have the power to change this structure by a majority vote, but unanimously opted not to do so in January.) While this arrangement might have made Sidley especially vulnerable to EEOC scrutiny, no law firms can afford to be cavalier, say experts in age discrimination. Deborah Weinstein, founder of the Philadelphia-based workforce law boutique The Weinstein Firm, says the Sidley lesson is simple: "You can't treat older attorneys differently than young attorneys. That is where the law is heading."

But it's not legal pressure that's pushing firms to move away from age-and-out policies. It's the seemingly unquenchable need for top talent. When skilled workers were in abundance, age was a convenient proxy for productivity. But with the supply of capable young lawyers being outstripped by the growing demand, it no longer makes sense to force the most experienced workers out the door.

It's also no longer as necessary to automatically force out elders in order to assure younger partners that there is room for them to increase their earnings, says Frank D'Amore, a principal at Attorney Career Catalysts. Few senior partners get the big bucks if they aren't generating good work for the firm, creating billings for hardworking juniors. And with compensation systems today based more on productivity than seniority, juniors are more likely to get their fair share of the draw. Flexible work arrangements, in which seniors give up their equity stakes, make room for younger partners to rise in the ranks.

The development of client teams over the last decade has also made it easier for multiple generations to work cooperatively. Rather than having a single partner dominate a client relationship, almost all large clients, and certainly all large matters, are now managed by numerous lawyers at different levels of seniority. With firms handling many complex projects simultaneously, junior partners have more opportunities to manage distinct pieces of work and develop their own rapport with major clients.

HOLD ON TO THAT TALENT

As firms move away from strict mandatory retirement regimes, Am Law 200 managing partners stress that flexibility -- for seniors and for firms -- is key. Flexibility may mean that a firm has no retirement age, or that it can waive a cap on a case-by-case basis. Whatever the policy, flexibility allows firms to retain valuable attorneys at a time when talent is at a premium.

Pillsbury Winthrop Shaw Pittman voted to get rid of its mandatory retirement last year, instituting instead a process through which partners can design individualized retirement plans. As a partner nears 60, she is expected to meet with managing partner James Rishwain Jr. and her practice group leader to talk about her future. The purpose of these relatively informal conversations, says Rishwain, is to build a plan that fits the individual partner's goals, whether she wants to exit, taper off, or plow full steam ahead. As long as a partner is still performing, Rishwain says, the firm will be accommodating.

In addition to allowing the firm to get the best work from its senior lawyers, Rishwain says, the policy has already proven to be a boon to its recruiting efforts. Several managing partners, in fact, commented that mid-career laterals are more likely to ask about their firm's retirement policies than ever before, with most seeking assurance that their careers will not be cut short by age caps. For example, Barry Gassman, 61, a project finance expert in the energy sector, jumped from Mayer Brown to Pillsbury in June, in part to avoid forced retirement at 65.

"As a partner hits [his] 60s," says Gassman, "mandatory retirement dampens [his] entrepreneurial spirit. Without that constraint, you are reinvigorated."

Many firms that still have an official retirement age now allow partners to remain in the equity pool well past the cutoff. Before their recent merger, both Dewey Ballantine and LeBoeuf, Lamb, Greene & MacRae required partners to retire at 65 unless the firms' respective management committees granted an exception. "In a world where the competition for talent is so fierce," says LeBoeuf Chairman Stephen Davis, "the best policy allows a lot of flexibility to deal with individual circumstances."

Davis and Morton Pierce, the former chair of Dewey, say the combined firm will continue to grant exemptions generously. "If you are productive, then it doesn't matter if you are 35 or 105," says Pierce. Case in point: In October the firm hired 64-year-old complex litigation partner Ronald Liebman from Patton Boggs.

Some firms allow partners who remain active past the age limit to give up their equity status. With policy committee approval, for instance, Dechert partners can stay on past 65, but their equity stake diminishes from 90 percent to 50 percent over the next five years. At 70, lawyers can remain full time as special counsel, but are entirely nonequity.

According to managing partner Barton Winokur, those who continue working past 65 -- like one 69-year-old product liability partner who billed 2,500 hours last year -- receive compensation that fully rewards their contribution. It just comes in the form of bonuses, not equity points.

No matter what the rule, Winokur says, it should not be applied blindly. "Law firms have a tendency to try to avoid thinking by having a policy," he says. "But you should always try to do things that are principled as well as practical and partner specific."

Duane Morris takes a similar approach. Equity partners become of counsel at 66, but compensation continues to be tagged to productivity. Frederick Dreher, 67, has been doing insurance M&A since 1964 and has absolutely no interest in slowing down. ("I don't play golf," he says. "I'm allergic to grass.") Despite his recent title switch, he kept working unbowed with no impact on his practice. He handled such big transactions last year that he says he is actually making more now as counsel than he did as an equity partner.

For seniors with valuable expertise who don't want to keep billing full throttle, some firms have created niche positions, much like Dickstein Shapiro did for Ken Adams. Kirkland & Ellis, which doesn't have mandatory retirement, hired Francis Neate in 2004 as of counsel when he was 64 to help raise the firm's international profile. An experienced corporate lawyer in Europe and current president of the International Bar Association, Neate no longer practices. Instead, he introduces the firm to key players on the Continent.

Similarly, Lewis Gould, 67, of counsel at Duane Morris, no longer spends the majority of his time working for clients. But he still chairs the firm's growing 60-member IP group and spends most of his time recruiting laterals, developing IP business, and counseling younger lawyers. "I think I have a lot to offer them about the law and how to grow into a leader in the firm," says Gould.

Firms can also hold on to their senior lawyers by offering them sabbaticals. When given a chance to reflect and recharge -- and get a feel for what life would be like without the law -- some lawyers have reconsidered plunging directly into full retirement.

Robert Brady, for instance, the 60-year-old codirector of Hogan & Hartson's pharmaceutical and biotechnology practice group, says he was "bone tired" and seriously contemplating retirement when he took advantage of the firm's three-month sabbatical program last year. He took three monthlong trips with his wife: to Paris and Rome; to Sea Island, Ga.; and to the wine country in Northern California and Oregon. While he loved the vacations, Brady missed the daily problem solving and client contact more than he had expected. So, after catching his second wind, Brady decided to return to work. He is now in the process of handing his responsibilities over to junior partners but says the sabbatical extended his run by at least three years.

For these alternative arrangements to succeed, firms must have compensation systems that allow them to negotiate individualized pay packages. Senior lawyers still expect to be paid fairly for their time, but boomers are often willing to trade money for freedom in the later stages of their careers. "This is a population who made more money than they ever expected," says Danilo DiPietro, head of the Law Firm Group at Citigroup Inc. His team includes seven financial planners who work with law firm partners to plan for retirement. "What we hear is that these folks are willing to take a change in status for a change in pay," he says.

Not surprisingly, the holdouts to adopting more flexible retirement policies are primarily, though not exclusively, elite New York firms that still operate on a lockstep or modified lockstep system, such as Debevoise & Plimpton, Davis Polk & Wardwell, and Paul, Weiss, Rifkind, Wharton & Garrison. Their compensation models leave little room to tailor pay to individual performance, so seniors working at a reduced pace would get a disproportionate share of the draw. A few of these firms allow senior lawyers to stay on temporarily as counsel, but they no longer share in the equity pool.

Managers at the lockstep firms say there is also less internal pressure to lower or waive the retirement age because most partners leave well before hitting the ceiling. The cap at Davis Polk is 70 but the average retirement age is 61, says managing partner John Ettinger. And few of these lawyers are heading for firms with older age limits. "People are younger now at 60, and they want to do other things," says Ettinger. "They spend three years in Africa, ride motorcycles, write books or go on to other jobs in nonprofit or for profit. I can't think of people who have retired and just sat at home."

EASING THE WAY OUT

No matter how long high-performing boomers keep working, they will eventually retire. While a fair compensation system may extend the stay of seniors, it can also encourage them to hand off work to the next generation. The challenge for large firms is to align the interests of retirees with those of the firm -- even as the ties between them are being severed.

Traditional eat-what-you-kill compensation systems reward business origination and individual billings, creating an incentive for seniors to hold on to their clients for as long as possible. According to Larry Richard, a Hildebrandt consultant, some firm leaders have changed their compensation approach and now reward partners who pass along clients and plan ahead for succession.

Sonnenschein Nath & Rosenthal, which has no set retirement age, has just started paying partners who are phasing out a bonus for transitioning clients to the next generation. "This is tremendously important," says managing partner Elliott Portnoy. "So we say to all partners, not only will you not be penalized" in the annual compensation process, "we'll treat [transitioning] as a premium."

The policy seems to be having an effect. Portnoy recently received a memo from a partner phasing out of equity status. The partner said he wanted to transfer billing credit worth more than \$3 million to the handful of lawyers in various practices who had taken over responsibility for those client relationships. "It was greeted by me with enormous enthusiasm," Portnoy says, "because it signals he has confidence that he will be rewarded for that. It is very much in the firm's interest."

Firms can also encourage partners to transfer contacts by granting royalty payments that would be paid after retirement based on a percentage of fees the firm generates from the partner's legacy clients. In this arrangement, Ward Bower of Altman Weil envisions a partner getting 10 percent of fees the first year, 8 percent the next year, and proceeding on down until reaching zero. A continuing payment would give partners a vested interest in having their clients remain with the firm.

In some ways, say managing partners, the evolution of big-firm law practice has already made partner departures easier to handle. Since most firms now employ a client team model, few partners have exclusive insight into the needs or personalities of major clients. And because of attrition at all levels, firms have learned to manage turnover. While work force consultant Weinstein says that firms could improve how they handle the constant movement of lawyers, few clients or managers are rattled by the loss of one partner.

Increased mobility does have a dark side -- weakened bonds of partnership and diminishing expectations of long-term loyalty. Several managing partners say that they still expect partners to share clients and train junior lawyers out of fidelity to the firm. But partners who haven't spent an entire career at one firm may not have a strong sense of duty. And, because most firms have moved to end or limit their unfunded pension obligations, partners also have less of a financial interest in a firm's long-term success.

"They need to incentivize partners to transfer relationships," says consultant Peter Zeughauser, head of the Zeughauser Group.

When succession is done well, managing partners say, the firm is given several years notice, and the lawyer gradually steps back from client work while advising junior members of his team. That's exactly what Richard McDermott did before he retired from Clifford Chance in 2004.

McDermott first considered retirement on Christmas Eve 2000. Then 60, McDermott was working late in the office on a deal that had to close before year's end. At 10 p.m. he learned that major portions of the acquisition agreement had to be redone. Facing a holiday all-nighter, McDermott says he thought for the first time, "I don't have to do this forever."

After the deal closed, McDermott told the managing partner that he would give the firm three more years but would begin phasing out immediately. He started including his two juniors on every new deal. He counseled colleagues behind the scenes as they took on more client responsibility. And he kept in contact with clients to make sure they were comfortable with the pace of the handoff. The move away from the front line was gradual, but by his last six weeks, McDermott says, the only calls he got from clients were congratulations and invitations to dinner.

From his experience McDermott learned that senior lawyers and their managers must communicate as early and as often as possible in order for a succession to go well. He now shares that knowledge with other senior lawyers as a principal with Practice Development Counsel, a business consulting firm that specializes in generational issues. Phyllis Weiss Haserot, the president of the company, agrees, arguing that when there is no communication about retirement, there is denial.

"Managing partners fear having really uncomfortable conversations with senior partners," says Haserot. "Older people fear losing their professional identity. It is important to get everyone used to the idea that they'll eventually have to make a change in their status." Haserot recommends starting the conversation early -- at least five years before a partner thinks he'd like to retire. She also encourages firms to hold regular seminars about retirement planning for all partners older than 50 or 55. Having group meetings allows information to be widely disseminated and also protects individuals from feeling they've been targeted.

According to our survey, few firms currently offer this type of retirement-focused transition training or support -- only 17 percent have a formal program to help partners plan for retirement, and just 25 percent offer financial counseling for partners. Many firms have, however, made an effort to prepare junior partners to take over client relationships and management responsibilities. To this end, Orrick, Herrington & Sutcliffe Chairman Ralph Baxter Jr. says the firm gives young lawyers key leadership roles such as office or practice group leader. (His firm abolished its mandatory retirement policy several years ago.)

Orrick also partners with Harvard Business School to provide leadership training to junior partners. Goodwin Procter has done the same. "The thing that keeps me up at night," says firm Chair Regina Pisa, "is whether the [boomers] will all retire at the age of 60, and the new generation isn't ready yet."

To get them ready, Goodwin began holding off-site workshops for junior partners on law firm economics, management and team-building four years ago. Nicole Fitzpatrick, a new corporate partner at Goodwin, says the training was helpful, especially since law schools don't typically focus on the business aspects of practice.

As the bar continues to gray and the generational pig keeps moving through the python, the conventional wisdom boils down to three points. Keep those you want for as long as you can. Help those you don't want find other work. And keep the pipeline full of ambitious successors. To Baxter's way of thinking, that's just good business. "We see everyone as having responsibilities, and each person is expected to make a contribution," he says. "What we want is for this all to turn on merit." It's not surprising that a generation born and bred to thrive on competition would be expected to keep going until they no longer can.

Seniors, start your engines.

