

Hiring and Compensation Trends for In-House Counsel

A Discussion with Heather Fine, Managing Director of Major, Lindsey & Africa

Heather Fine is a managing director in Major, Lindsey & Africa's Chicago office, where she specializes in placing attorneys in corporate legal departments in a wide range of industries in a variety of locations. She has recently handled searches ranging from lower-level corporate counsel positions to vice president and general counsel roles in industries such as manufacturing, consumer products, telecommunications, sporting goods, professional services, financial services, and higher education, among others. Prior to joining the firm, Ms. Fine worked for several years at the Children's Law Center in Washington, D.C., first as a staff attorney and then as a supervising attorney, representing abused and neglected children in the foster care system. She also served as counsel for the U.S. Senate Committee on Homeland Security and Governmental Affairs' Special Investigation into the response to Hurricane Katrina. Heather

began her legal career as an associate in a boutique family law firm in Bethesda, Md., assisting clients with divorce, custody, support, and adoption matters. Ms. Fine graduated from Colby College with a degree in government. Prior to entering law school, she worked on Capitol Hill for Sen. Joseph Lieberman (D-CT). She then returned to her home state to attend the Pennsylvania State University's Dickinson School of Law, where she represented at-risk children and families as a student attorney in the Family Law Clinic and graduated with honors.



Interview conducted by John Okray and Diana Lai, chair and treasurer, respectively, of the FBA Corporate and Association Counsel Division.

What do you see as the current trend for the hiring and compensation of in-house counsel?

As a general matter, there appears to be an increase in hiring of in-house counsel as companies are building their legal departments. For several years, I believe it is fair to say that companies have been somewhat hesitant in taking on additional head count within the legal department and rather relied on outside counsel. Similarly, compensation is increasingly competitive, and must be, to obtain the best talent in the marketplace. Whereas just a couple years ago, candidates were managing only one offer at time, now we see strong candidates with multiple offers at any given time.

With regard to hiring, companies have been somewhat more conservative in the last couple of years for obvious financial reasons. It appears that most are beginning to feel comfortable that the economy is improving, and thus they are ready to hire attorneys for their legal departments. Moreover, many companies are embracing the incredible cost savings associated with bringing a range of legal work in-house. With an improving economy, I believe that companies are likely to continue hiring additional in-house counsel. I would note, however, that while there is an increase in hiring for legal departments, as a result of the 2008 financial crisis and the ever-changing legal market, there is an abundance of capable, qualified lawyers in the marketplace. This phenomenon can make securing a legal position difficult, which has become extremely frustrating for lawyers who are seeking new roles.

In the same vein, most companies understand that although there is a wealth of talent in the marketplace, to secure the best lawyers for a legal department, competitive compensation packages are critical. As recruiters, we also stress this factor to our clients. Hiring managers and internal human resources (HR) departments understand this dynamic, and more often than not, do everything they can to develop a competitive package. We have seen companies recently go above and beyond with the best candidates, particularly with regard to relocation. Notably though, compensation involves several factors that can be very different depending on the employer, the position, and the market.

Compensation is always a touchy subject. What is reasonable in terms of a candidate disclosing her or his current compensation versus a company disclosing the range of compensation it has budgeted for a position? As a recruiter how do you balance the competing compensation interests of candidates and companies?

Agreed. Compensation is certainly thought of as a taboo topic! I would argue that if a candidate is working directly with a recruiter, and often times with an employer's internal HR department, compensation should be discussed as openly and as early as possible. With that said, as recruiters, we have to be smart in the way we handle this matter with candidates, as many times we only have an approximate range with respect to a particular position. We want to be careful not to lose strong candidates when we believe there can be a meeting of the minds between a candidate and a company based on what we know regarding their view on compensation for a particular role.

Let's begin with the company. At Major, Lindsey & Africa, we

primarily work on an exclusive basis with our client—the company; therefore, it is extremely important we understand our client's compensation parameters (the stretch and the limitations) before we enter the market with a new search. One of the most difficult search problems that can arise is when clients fall in love with candidates who are too expensive, and they do not know this because we didn't know it! I believe it is our job to prevent this from happening. And, we can only do that if we have a candid conversation with a client about compensation. This also allows us to decide whether to pursue a particular candidate and what information to provide to the client so he or she can decide if this is a candidate to will stretch for or if there truly is a limit on what can be done. Therefore, in order to serve our clients on this issue, we must understand a candidate's compensation.

Now to the candidate. Candidates are almost always relieved when I raise the issue of compensation during the initial stages of a search because let's face it ... it is the forbidden subject! Candidates want to ask but do not want to appear "all about money" during an initial discussion with a recruiter. To ensure we represent our clients and our candidates in the best way possible, we regard it as an essential part of the conversation ... if our client authorizes us to discuss it. Initially, we share the range of where we understand a position to be—this is one factor that will help us and a candidate decide if a position is right. When a candidate begins working with us, we tell the candidate that his or her compensation will be discussed with the client. We want candidates to understand how we use their information—we want everyone to be on the same page. In addition, if someone can compromise, we need to know that as well and can only know it when this information is on the table.

The difficulty arises when a client does not want us to disclose compensation at all. Under these circumstances candor is required. I will be frank with a candidate. I often tell an individual that if he or she is willing to invest the time upfront in our search process, then we should move forward and I will get as much information as possible as we go along. Most candidates appreciate the openness and are willing to move forward. Similarly, a client expects the same. Unless the difference is great, we often find that if it's a match, both the company and the candidate will make it happen. But, compensation is a key part of any search, and it is critical for a recruiter to have an open, candid conversation with clients and candidates on this issue.

As part of the recruiting process, some corporate executives are offered, or able to negotiate for, employment agreements that provide them with severance in the event of their termination without cause or similar events. Should this generally be an expectation for anyone interviewing for a general counsel role? Is there any industry standard for the term of severance payments in employment agreements, such as one or more years of compensation paid?

This is a terrific question. It is answered broadly, however, as it completely depends on the company and the level of the position. Many general counsel do not have employment agreements. It is critical for candidates to seek advice when in this circumstance. Rely on a recruiter or other outside resources. There should be

no expectations, but negotiating for what a candidate believes is reasonable is certainly fine. And, there is no industry standard, although there are certainly some industries that are in a position to provide higher compensation ranges than others.

Have you seen any industry norms or trends of in-house counsel being offered or negotiating for equity, options, or the equivalent as part of their offers to join a company?

Generally, if a company can offer equity, stock options, or other long-term incentives as part of a compensation package for in-house counsel, the company will do so. However, many times a company is not in a position to provide this component, either by virtue of the level of the position or simply because it is a private company.

As a result of disclosing a candidate's compensation package prior to an offer, when a company is putting together a package for the successful individual, it is aware of all the details of the candidate's compensation, including equity. More often than not, we see public companies working hard to provide some long-term incentive equivalent to the candidate's current package. If they cannot do this, they will let us know, and we will inform the candidate. However, many times if a candidate is particularly interested in a job, or does not have a good situation in a current position, the matter of equity may not hold a great deal of importance. The larger issue is when a candidate will lose the ability to exercise options if she leaves before a triggering period of time. In this scenario, the concern is whether the company can offer this candidate anything to make her "whole." Sometimes companies may offer a signing bonus, but the question is whether it is enough for the candidate. We also see companies extending start dates until the candidate reaches the triggering time period. In addition, candidates may even decide not to move forward with a particular role if the amount is big enough and the company is not in a position to make the candidate whole. Overall however, for high-level positions, and almost always for a general counsel position at a public company, the trend is to offer a compensation package including equity.

Are there any major differences in obtaining an in-house position and/or compensation at public companies versus private companies? Has the increased ownership of companies by private equity firms had any impact on hiring or compensation for in-house counsel jobs? Does working for a company controlled by a private equity company increase the reasonableness in requesting an employment agreement or equity/options since there will ultimately be an "exit" by the private equity fund?

With regard to obtaining an in-house position at a public versus a private company, I believe we can say that it depends on the position and the company. With a large public company, the process can often move at a slower pace, as there are many levels of approval a candidate must go through before reaching the offer stage. In particular, when a general counsel role is involved, ultimately the compensation committee of the board of directors must approve the compensation package. Smaller, private companies often (although not always) are nimble and can move quickly through the hiring and offer stage.

Similarly, with regard to compensation in public versus private companies, although there may be some variation (i.e., public companies are in a position to offer equity/long-term incentive plans), there is not one specific difference. Some companies—public or private—are not in a position to pay in-house counsel as competitively

as a candidate may hope for various reasons. Again, much of this depends on the position and the company.

I do not know that we can say for certain that increased ownership of companies by private equity firms has a major or different effect on hiring or compensation. Of course, if a private equity company is looking to exit, that can absolutely affect employment overall and often may result in the termination of in-house counsel during a change of control. In-house counsel are acutely aware of their circumstances in these situations, and they should be. Certainly, a request for an employment agreement with a specific clause addressing this factor can be helpful. Many times, though, this will only be entertained in the situation of a general counsel or another high-level position.

Overall, many of these cases are circumstantial, and candidates should do their own due diligence with respect to a position with a public company or private company that may be private equity controlled. Candidates should ask questions, understand timing if an exit is in the near future, and trust their instincts.

Do you have any suggestions for attorneys interviewing for an in-house role? Can you provide examples of strategies that have worked particularly well or mistakes candidates have made?

The suggestions are endless, so I will try to limit the response to the most important.

The biggest interview suggestion I can offer: Be prepared! We should never hear from a client that a candidate is not prepared, but we inevitably do! Know the schedule and with whom you will be meeting. Research the individuals' backgrounds, and of course, the company's. If a candidate is working with a recruiter, make sure to schedule a call with the recruiter prior to the meetings. Candidates should not be shy—ask a recruiter for information that may be hard to find regarding the company and the interviewers. Are there any insights that the recruiter may have about the interpersonal style of the interviewers? It is also key for the candidate to understand where the company is in the process. Always assume there are still other individuals in play.

Candidates should always be ready with a thoughtful response to the question of why this particular job and why this particular company. We have heard countless stories from clients about generic responses to this key question. If a candidate cannot give a detailed, thoughtful response to why he or she wants a particular job, the question becomes does this person really want the job? Companies do not want to hire lawyers who aren't invested in the company and the job. The big pitfall that should be avoided at all costs is the one where a candidate implies she is only looking at a given employer because she cannot stand her current employer! Staying positive and coming up with another reason is critical.

Also, candidates should always be prepared with detailed questions about the company. It is essential for candidates to show they have done their research. In addition, candidates should always ask about the person they are meeting and his or her role in the company, how he or she got there, etc. Recently, we had a client call us in shock that all three of the candidates interviewed did not ask a single question about the company or the interviewer. The fastest way to show a lack of enthusiasm about a position and/or a company is to arrive with no questions. Of course, always let the interviewers finish their questions first.

In addition, candidates should always be prepared for questions about weaknesses. Every candidate has a weakness of some sort.

(Yes ... it's true!) If you have an obvious weakness for a position, remember you made it this far, so embracing that weakness is a good strategy. However, also discuss ways to mitigate the weakness.

Although candidates should always be prepared, we often hear that candidates try "too hard" in an interview. Employers can easily determine when someone is not genuine. Be yourself, and be professional. Confident, but not cocky. With that said, know the company culture and be self-aware. It is fair to say that not all of us mesh with every kind of professional culture, and as a job-seeker, it is your responsibility to know where you thrive and also what kind of culture may be unmanageable.

Bottom line: Be ready for anything. Be able to walk out of an interview and say, "I did everything I could and now let the chips fall where they may." Remember, it's not always going to be a match, and that is ok. A candidate can only do his or her best.

How has social media changed the landscape for in-house counsel recruitment? Do you have any advice in terms of what or how much information candidates for in-house counsel positions should include on their LinkedIn or equivalent site profiles?

There is no question that social media has changed the landscape for in-house recruitment. These tools allow recruiters to search quickly for specific candidates using a variety of key terms. They also allow candidates to showcase their background and skill sets in a creative and distinct way. I highly encourage candidates to have a complete LinkedIn profile, with a professional-looking photo if possible. A profile should include educational background, previous and current positions (with titles), and most importantly, a summary of a candidate's background. We advise anyone who is a job-seeker, or generally a professional, to join LinkedIn and develop an appropriate profile. Some folks are hesitant, as they equate LinkedIn to Facebook or other social media tools, and therefore have reservations about creating a profile. LinkedIn, however, is a professional site. As a recruiter, I conduct a great deal of research on LinkedIn and find some of my best candidates using that method. I know I am not the only one!

However, I will qualify this and say that an interview, at least one if not several, is still the most crucial part of ultimately securing a position; therefore, a candidate must have strong interpersonal skills and the substantive skill set as outlined on LinkedIn. Do not be someone you are not. Employers can see through it immediately.

What advice do you have for attorneys that work at law firms or for a government agency that are interested in obtaining an in-house position at a company?

Attorneys who work for law firms or the government receive excellent training. If a lawyer is ready to make the in-house move, he or she should remember that it may take some time. Patience is the secret ingredient. In fact, I believe the job search is one big game of patience ... patience and numbers. I like to joke that it is just like dating ... or finding the right pair of jeans! Although applying for positions of interest and working with recruiters (where possible) are important steps to take, I always let these candidates know that the first step should be networking. The importance of networking in this legal landscape cannot be underestimated. If a candidate must use discretion with a job search, then make a list of trusted advisers and begin with those folks. In addition, at times it can be difficult to break into the in-house world, so again, patience is essential.

For these candidates, reflecting on their skill sets, in particular the substance and nature of contact with clients, is critical. In-house hiring managers want to know these lawyers can easily communicate with business leaders. In addition, when networking, the key is not to approach contacts with the "I am looking for a job" mentality. Candidates should approach contacts like a sponge, hoping to learn as much as possible regarding an industry and the job of an in-house attorney. The more a candidate learns about the ins-and-outs of in-house legal roles and legal departments, the more a candidate can reflect on his or her background as it relates to in-house roles, and the better she will be explaining in an interview why this is the right job.

I would also add that many law firm attorneys will say that they are looking to go in-house because the quality of life will be better. I would caution lawyers about this type of thinking. Although the schedule may be somewhat more predictable, in-house counsel work incredibly hard every day and many weekends, so if candidates want to make the transition, they must understand their personal reasons for doing so.

Lastly, law firm or government attorneys must be on LinkedIn! That is step number one!

Do you have any suggestions for law students that would like to ultimately work in-house?

In the current legal market, I believe it is important for law students to focus on securing their first legal position that will provide excellent training. Often that is a law firm, government agency, or a public sector job. Then, law students should begin speaking with their contacts who work in-house. Learn what they do in the in-house context, and make sure their network knows that the ultimate goal is an in-house job. In addition, joining professional groups, in particular the local chapter of the Association of Corporate Counsel, is helpful in meeting in-house counsel. Start networking as early as possible. Moreover, if a law student has a real passion for an in-house career and realizes this while in law school, internships and externships at companies are the best mechanisms in which to obtain experience and prove commitment to an in-house legal career.

What are your most and least favorite things about being a legal recruiter?

I love my job! I work with fantastic people at Major, Lindsey & Africa and in a business that keeps me on my toes. There are so many aspects to this job that I appreciate and love; however, I most enjoy the many different people I get to interact with on a daily basis, from candidates to clients to colleagues. This role involves constant interaction with other people, and that is really terrific! By engaging with candidates and clients daily, I am constantly learning new and exciting things about the law and life! And, no day is ever the same!

On the other hand, the most difficult part of this job is that I cannot help every candidate who is seeking a position. I often wish I could give everyone who needs and wants an in-house job, an in-house job. The job search can be frustrating at times. And many times as recruiters, we are the source of that frustration because we are in the business of assisting candidates to secure employment and clients to secure the best candidate for the job. It is hard to be a source of frustration for candidates. And, it can be hard at times to help candidates keep the faith! ☺