Moving from spend management to predictive spend: Control outside counsel spend with better data

WHITE PAPER

Feel the pressure? That's the corporate legal department being squeezed from all sides at once. While these teams are facing exposure to greater legal risks, more complex matters, and more global matters than ever before, their budgets are often not increasing. Meanwhile, the landscape in the companies they serve — as well as in the outside firms they work with — is changing fast. "The Great Resignation" and cultural shifts around work-life balance are creating staffing and talent shortages. Rates for outside counsel are skyrocketing. All this makes spend management a higher priority than ever.

Legal departments must become more effective managers of their budget and staff time — and that requires robust data, useful metrics, and effective analysis. Technology can help stretch a legal department's spend by providing data that goes beyond hourly rates and discounts to inform decision-making that creates a competitive advantage. With the right tools, these teams can practice at the top of their license, offering the highest value possible to their companies.

Best-in-class spend management technology offers these departments end-to-end visibility, benchmarking, and process assessment, all of which helps them more accurately assess and minimize legal fees while providing superior service. Read on to learn more about the obstacles legal departments face in managing spend, how embracing modern technologies can benefit them and their companies, and what best-in-class spend management tools look like.

The state of technology in legal departments

Over the past decade, Legal Operations (Legal Ops) and spend management have evolved as legal departments have become more sophisticated. Legal Ops is now a cornerstone function and heavily relied upon as corporations embrace technology across the board.

The need to be efficient and keep costs down is vital, as legal departments are almost universally being asked to do more with less. And year after year, finance departments are demanding better transparency into legal spending and more accountability from outside law firms. As a result, the top priority for legal departments is controlling outside counsel costs, according to the Thomson Reuters® 2021 Legal Department Operations Index report (2021 LDO Index).

Finance and the C-suite want to save, and Legal Ops is tasked with seeking the best way to do so. Legal department leaders are asking their Legal Ops teams questions like: How much can we save by using tools and technology? Are there ways to introduce technology to solve specific problems and get better results in particular ways? How can we reduce or better predict our spend with outside counsel? Can we take a broader approach, examining how the department does things in all ways and engineering new processes across the board?

Technology is at the heart of all of these questions. In-house legal departments have long been resistant to data and technology tools, but that is beginning to change, according to a recent Gartner article. Legal departments are beginning to adopt technology to improve workflows and better manage costs.

Yet this adoption is slower than it needs to be. Not all companies adhere to the standard industry baseline of spend management and reporting on legal work. In smaller companies, spend management and reporting is commonly passive, responsive, and reactive. In larger companies, while there may be formal processes in place for spend management, reporting it tends to be supported by less-than-ideal data.

The pressure is rising — the numbers prove it

Nearly 60% of legal departments reported a surge in work demands during the pandemic, while almost 30% had to reduce spending, according to the Thomson Reuters 2021 State of Corporate Law Departments.

Turning to technology

The 2021 LDO Index found that more than 52% of legal departments surveyed have increased their use of tech in the past year. Similarly, increasing and improving the use of technology was among the top five priorities identified by legal departments.

Regardless of their size, legal departments need proper spend management technology that provides end-to-end visibility and deeper benchmarking, so they can make more accurate assessments of fees and attain better value for the money they spend. Ideally, a spend management solution would categorize and analyze legal work, tagging legal matters to ensure the selection of the right legal resource to address a project. For example, a high-risk matter might require hiring a white-shoe law firm, while commodity matters could be handled by a smaller firm or an alternative legal source provider (ALSP). Insights from spend management tools can help legal departments choose to in-source the work for certain matters to reduce cost even further.

Problems and challenges for legal departments

If legal departments are to move toward a future in which they fully integrate technology for maximum benefit, they must understand the barriers they face. Properly tracking and controlling spend is difficult to impossible when there is:

Lack of transparency into legal spending

Legal departments need to know that they're paying the right cost for the activities they choose to undertake in order to optimize value in their work. But without appropriate technology in place, departments are unable to accurately track current spending, predict future spending, or make data-driven decisions. This makes it difficult to enforce billing guidelines and hold outside law firms accountable for their work. A critical component that is missing for many legal departments is benchmarking — both internal performance benchmarking and external benchmarking for negotiations. Without benchmarking, it's difficult to prove consistency internally, with others in the industry, and across law firms.

Insufficient visibility into total risks associated with legal matters

Legal matters can be complex, with risks that go far beyond the immediate or obvious. Legal departments may end up with an inefficient allocation of resources if they base their spending decisions on the largest current risks rather than the overall risk profile. Difficulty predicting the effects of regulatory changes also presents a challenge, as legal risks can change overnight depending on such shifts. Legal Ops teams typically lack the reporting and analytics functions that can help make sense of new information and changes in the legal landscape.

Unchecked and unrationalized spending

The focus on legal cost control highlights the need to save and optimize in this area. Law firm hourly rates are skyrocketing, with some partners' pay approaching $2,000 per hour. Legal departments need to manage rate increases by comparing new rates to prior rates and to similar work from other firms. This can take a lot of manual work, which can be alleviated by technology and tools. With data analytics and other technology tools, teams can optimize the use of external law firms based on their years of experience, geography, and other factors necessary to consider for specific matters, which can often yield more savings than negotiating discounts on rates.

Difficulty hiring and retaining staff

As has been widely reported, workers are actively redefining what they want from their work lives, weighing considerations such as remote and flexible work options that may not have been previously available. With workers' priorities in flux, legal departments may be struggling to hire and retain staff, which places even more burden on current staff. As in other departments, legal teams must cover for employees who have left, split their time between training new hires and doing their jobs, attempt to recreate business knowledge, and take on tasks outside their typical workload to make the department function effectively.

The proliferation of Legal Ops tech offerings

Legal tech is a fast-growing field, with more and more offerings coming online all the time — some far more helpful than others. In many cases, providers offer point solutions, leaving Legal Ops teams to cobble together multiple tech tools to meet overall needs. An additional challenge is that poor interactions with low-quality vendors may have left a bad taste in people's mouths, causing resistance to adoption in legal departments.

What do best-in-class spend management solutions look like?

A spend management tool that helps legal departments address all of these challenges is a powerful business instrument. According to the 2021 LDO Index, a high-quality spend management tool can help legal departments directly address their top four priorities:

• Controlling outside counsel costs

• Enabling data security

• Increasing internal efficiency in delivering legal services

• Making workflows more efficient

A legal spend management tool is more complex than a typical accounts payable tool. Although it should be designed to work in tandem with the business's finance system and be capable of integrating with the accounts payable function, it must also be focused on addressing the complicated nature of legal matters. As matters themselves change and pricing evolves, these shifts must be accounted for. Best-in-class spend management solutions:

Provide data-driven insights

Best-in-class tools use robust data capabilities to help legal departments achieve better results in a trackable, verifiable manner. Historically, legal departments relied on simple data about hourly rates and rate discounts, but more extensive data from internal sources and external benchmarking can enable more complete oversight and awareness of legal spend — and whether that spend is leading to the most value. A data-driven spend management solution allows departments to control, predict, and responsibly reduce costs. For example, it can help legal teams create a designated preferred counsel program with selections based on a rigorous data-driven process.

Take advantage of the cloud

Legal teams should look for cloud-based software-as-a-service (SaaS) solutions that offer configurable workflows and real-time reporting. This allows Legal Ops to provide the right data to the right people at the right time to drive better decisions. Cloud-based solutions enable legal teams to connect their internal information with external data to enhance the quality and confidence of decision-making and negotiation.

Facilitate better decision-making

Best-in-class spend management tools help legal departments evaluate requests for proposals (RFPs) and select the outside counsel that is best suited for their purposes — and can provide the most value for the investment. Technology can provide insight into scope of work requirements, what a reasonable fee would be for the needed work, and what price structure will fit best. With these insights, legal teams can run their departments more like a business and better demonstrate the effectiveness of their spending to company leadership.

Provide metrics

Spend management tools excel at providing merit and cost structure analysis for discounting, rates, alternative fee arrangements (AFAs), budgets, and other key metrics. For example, departments might use the tool to understand how much work is billed using hourly rates versus AFAs. The vast majority of fees paid by companies are based on work billed on an hourly rate basis, so analyzing hourly rate spend offers the most immediate opportunity to reduce costs. Some tools synthesize hourly rate information and alert companies that they might be paying rates that are too high, but many algorithms that do this provide conclusions at a level that aren't useful in rate negotiations. Legal teams need tools that can provide insights at a level comparable to the data that law firms use, which is largely based on years of experience.

Offer benchmarking

Best-in-class tools provide internal performance benchmarks and external benchmarking to prove consistency internally, with others in the industry, and across law firms. External benchmarking is critical to guide legal teams when they are negotiating similar terms used by similar firms. With external benchmarking data, law departments can compare legal spend and risk data against similar law departments, including by industry, spend, department size, company size, location, and law firm performance.

Track costs and benefits

Spend management tools should allow legal teams to categorize and analyze legal work and tailor the solution appropriately so they can track all costs and benefits clearly. The ability to track benefits that go beyond financials is a key element of these solutions. While benefits of legal matters can be monetary, such as settlements, they can also be more intangible, such as risk avoidance or advantageous market results for company products. Technology helps legal teams break out of looking at costs in a vacuum, helping them look at the results as a corollary to those costs. Accounting for how legal matters affect the business as a whole allows the legal department to better analyze and communicate the value it is creating while justifying spend.

Use advanced capabilities

Best-in-class spend management tools enable streamlining, digitization, and automation, and offer built-in artificial intelligence (AI) and machine learning (ML) capabilities to apply that intelligence to legal departments. AI can help lawyers automate repetitive tasks, thereby streamlining processes, saving time, and reducing errors. For example, AI can be used to help execute low-liability agreements like nondisclosure agreements (NDAs). ML can help with legal research, contract review, and document analysis.

*Legal department use case: **Using legal tech for single-plaintiff employment litigation***

Applying technology tools to a process that typically takes a lot of manual intervention can introduce incredible efficiencies for legal departments. An example of how a spend management tool can benefit a legal department is negotiating alternative fee arrangements for single-plaintiff employment litigation. It can take up to three months for a Legal Ops team to review historical spend to make a data-informed decision about the appropriateness of the agreed-upon rate structure. This analysis is particularly crucial in the face of today's skyrocketing rate increases. And it's a task that becomes unwieldy when a team is managing, say, 20 outside law firms, with negotiations required roughly every two years and fees increasing at different rates for each. Doing this work manually can be a full-time workload, taking one legal advisor away from providing better value to the company. A best-in-class spend management solution incorporates that extensive process and provides data-based, rapid, and accurate spend forecasting and analysis while eliminating the manual workload.

Benefits and opportunities for legal departments

Best-in-class spend management tools help legal teams become more effective, cost-efficient, and valuable within their organizations. With the right tool, legal departments can:

- **Accurately capture and report critical data**

  - Data about hourly rates, matter resolution, RFPs, AFAs, and other factors is critical to effectively managing legal departments and proving their value to the larger organization. And spend management tools enable the accurate capture and reporting of such data.

- **Reduce costs**

  - Spend management tools enable legal departments to reduce costs by providing better forecasting for legal spend and enable informed decision-making.

- **Get more bargaining power**

  - Spend management provides legal departments with the ability to come to the negotiating table with more bargaining power. A best-in-class system uses real, benchmarked data that can inform rates and rate increases, replacing the more subjective way in which negotiations are often done.

- **Keep spend aligned with a changing market**

  - The market is constantly changing, often quickly, and legal spend can be a casualty of these shifts. Spend management tools can help keep spend aligned with the changing market by using the strength of benchmarking.

- **Move beyond spend management**
  - Spend management is an essential piece of broader project management and matter optimization. Historical spend data might be able to inform the team whether it's worthwhile to continue working with a certain law firm or to renegotiate terms, as well as whether certain aspects of a given matter or project need to be redesigned or redirected.

- **Become a strategic enabler**
  - With data-backed, benchmarked insights into legal operations and spending, the legal department can play a more confident role at the center of organizational discussions. Legal teams can be more proactive with the C-suite to address costs when they are able to marshal data to predict future matter management costs and needs.

Customer spotlight: Amazon

As Amazon expanded around the world, the company's legal department struggled to approve and reconcile all the paper bills and tax information from overseas business units and law firms. The company needed a cloud-based tool to help the Seattle-based legal team centrally manage billing, budgeting, and spend reporting. Adopting a spend management tool has allowed the legal department to streamline and organize these internal processes, such as automatically routing international tax and entry information for each invoice to local business units for review. Amazon now uses this technology to collect invoices, budgets, and unbilled time from 100% of its firms in more than 90 countries. (Source: "Using Metrics to Unlock Value in Your Legal Department," Thomson Reuters, 2021.)

Get the best-in-class spend management tool

Robust spend management tools such as Thomson Reuters Legal Tracker help legal departments get more insights from their spend data, make better decisions based on that data, and deliver their best legal work at a lower cost.

Legal Tracker is the most widely used software for spend management, matter management, and performance analytics in corporate legal departments — and Legal Tracker Advanced goes the extra mile to tell you not only what you spend, but what you should spend, and how to take action.

Legal Tracker Advanced provides law departments with reliable projections and data so they can better manage expenses, including helping identify if matters should be scoped out or handled in-house. Departments using Legal Tracker Advanced can better understand proposed rate increases, make informed decisions based on industry insights, and gain deeper insights into the spend of their departments compared to their peers. Advanced workflow tools help legal departments and Legal Ops take on a more proactive, advisory role in the organization — moving from a center of cost to a center of value, and even profit, for the company.

Learn more about this real-life solution to the challenges legal departments face. Request a demo or learn more about Legal Tracker and Legal Tracker Advanced.

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