

# Is the Billable Hour Mandate Holding Us Back?

BY CHUONG M. LE



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**T**he billable hour mandate has long been the cornerstone of law firm billing practices, evolving into a prevalent model due to its origins in the early 20th century as firms sought a transparent method to bill clients. Initially introduced to ensure fairness and accountability, it represented a shift toward quantifying legal services in a tangible manner. This billing practice was seen as a straightforward and seemingly fair way to charge for legal services, benefiting clients by providing a clear measure of the effort expended on their behalf and ensuring lawyers were compensated for the precise time they invested in a case. Lawyers log the hours worked on a case, and clients pay based on these hours, making it seem like an effective way to align compensation with the amount of work done. This model, in theory, ensures that clients pay for the exact amount of work done, allowing for a detailed breakdown of services rendered, and ensures that lawyers are compensated for every minute they work. It encourages meticulous record-keeping and can foster a sense of trust between client and attorney, as clients can see exactly where their money is going.

However, this seemingly equitable system does harbor underlying negative complexities and even, perhaps, unintended consequences. This raises a critical question: Does this time-honored billing practice truly serve the best interests of both clients and lawyers, or does it put unnecessary pressure on lawyers to focus on revenue more than successful outcomes?

### **The Productivity Paradox**

Looking at the billable hour model from the top down reveals its inherent drawbacks, particularly when it is rigidly enforced, stifling innovation and flexibility in legal work. The model often traps lawyers in a productivity paradox: though aimed at measuring work, the emphasis on accumulating billable hours can paradoxically lead to inefficiencies and a deterioration of work-life balance. For instance, a lawyer working under the pressure of meeting the firm's stringent billable hour requirement might spend excessive time reviewing docu-

ments or conducting research, not necessarily because the case demands it, but to ensure their hours are sufficiently high to secure their advancement or, in some instances, to avoid termination. This dynamic can create a significant misalignment of interests between the lawyer and the client. Instead of striving to find the most effective or innovative solution to a legal problem, the incentive structure encourages lawyers to extend the amount of work done on a case, potentially leading to higher legal fees for the client without a corresponding increase in value.

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One illustrative example involves the preparation of legal contracts. In an optimal scenario, a lawyer might identify a strategy to streamline the research and drafting process, potentially saving time while maintaining high-quality output. However, under the billable hour mandate, there's a disincentive to employ such efficiencies, as doing so would reduce the number of billable hours, even though it could lead to a better outcome for the client and a more satisfying work process for the lawyer. Similarly, in litigation, a lawyer might not be incentivized to explore all possible options or encourage clients to consider the negative impacts of the possible outcomes, opting instead for a drawn-out court battle to

increase billable hours. Analyzing from the top down, it's important to note that attorneys are not consciously creating these negative consequences, but that these negative consequences are simply the result of the system itself. These practices come together to not only strain the lawyer-client relationship but also contribute to the lawyer's stress and burnout, as the focus shifts from the quality and ingenuity of legal work to merely the quantity of hours billed.

### **Quantity Versus Quality**

A study by Clio, a cloud-based legal technology provider, found that lawyers are bringing in nearly 75% more revenue than they did in 2016, adjusted for billing rate increases.<sup>1</sup> This notable increase in revenue has been attributed to a significant rise in workplace productivity, with lawyers working on 25% more cases and recording 35% more billable hours than before. While these figures ostensibly indicate a substantial uptick in legal work, they also underscore a deep-seated reliance on traditional billing models that emphasize volume over other factors.

However, it's important to contextualize these findings within the broader landscape of the US legal market, which is often characterized by a work-centric and career-centric culture. This environment places a high value on long working hours and high billable hours as markers of success and commitment, potentially contributing to the observed increase in revenue and productivity. The pressure to meet or exceed billable hour targets can drive lawyers to take on more cases and extend their working hours, not solely out of necessity for the workload but also as a strategy to advance their careers and gain recognition within their firms. This culture, while rewarding in terms of revenue and career progression, can perpetuate the cycle of overreliance on billable hours and inadvertently sideline considerations of work-life balance, mental well-being, and the pursuit of innovative legal solutions that might be more efficient but less lucrative in terms of billable hours.

The move away from the billable hour mandate is starting to gain traction in certain areas of the legal industry as firms recognize

its drawbacks. Eliminating the billable hour mandate can alleviate unnecessary stress and anxiety among lawyers and partners, steering the focus away from mere busy work toward finding timely solutions for clients.

Critics of the billable hour model argue that it may not effectively encourage the achievement of significant milestones or the delivery of high-quality, innovative legal solutions. In contrast, alternative billing methods, such as project, task, or case billing, align lawyers' incentives more closely with the outcomes and value provided to clients. These methods encourage efficiency and creativity, as lawyers are rewarded for finding the best solution in the most effective manner, not just for the time spent. By focusing on the successful completion of specific tasks or cases, these alternative billing methods can better reflect the actual value delivered to clients and the community served.

### Proffered Solutions

Importantly, this shift does not mean less income for law firms. Instead, it can lead to a more client-focused practice, potentially attracting a larger client base and encouraging repeat business due to greater client satisfaction. Building on the removal of this mandate, a firm may choose to continue using billable hours as a way to charge clients for work, or they may choose to introduce alternative billing models, such as flat fee, contingency, subscription, hourly, and hybrid models, which can bring about a revolutionary change in how the culture of these legal professions operate. Flat fees provide predictability for both the client and the lawyer, allowing clients to budget effectively and lawyers to focus on delivering results rather than tracking time. Contingency fees align the lawyer's interests with the client's success, incentivizing efficient and effective representation. Subscription models can foster long-term client relationships by offering ongoing legal services for a regular fee, creating a stable revenue stream for the firm. Hourly billing, while still time-based, can be adjusted to reflect the complexity or value of the work rather than strictly the time spent. Hybrid models combine elements of these various approaches, offering flexibility to tailor billing to the specific needs of each case



or client. By adopting these models, firms can attract a wider range of clients, including those who might be deterred by the unpredictability of traditional billing, potentially leading to increased revenue and client satisfaction.

For this shift in how we look at work and productivity to occur, there needs to be a cultural shift in the legal profession that starts with the law firms prioritizing effective solutions and a work culture of excellence, not how many hours a day someone works or how many hours someone has to bill. By getting rid of billable hour requirements, law firms can instead direct their energy into fostering authentic client relationships and equipping their staff members with the ability to do so—an approach that leads to a more fulfilling and dynamic work environment for lawyers, promoting innovation, mental health, and creativity with a greater focus on results obtained rather than just hours logged.

### Opening Doors to a Better Law Practice

Right now, the persistence of the billable hour mandate is starting to become an archaic benchmark for productivity. It's clear that, in some firms, this metric is moving to the wayside, opening doors to a practice that values innovation, integrity, and client outcomes over time

spent. As we embrace more sustainable billing methods, we foster a culture that emphasizes the effectiveness of the counsel provided rather than the duration. This transition isn't just about improving the attorney-client relationship; it's about reshaping the very fabric of legal service delivery.

So, as we look to the future, the question we should be asking ourselves is not if we should leave the billable hour mandate behind, but rather, what will we gain when we do? The answer, perhaps, lies in the satisfaction of our clients and the well-being of our teams. Isn't that worth the change? **CL**



**Chuong M. Le** is managing partner at 3i Law, where he represents clients in the areas of private client services, corporate law, tax, and international transactions. He works with individuals to protect their assets and help build their legacy through an integrated estate and tax planning approach, as well as with US-based and foreign companies at all levels of growth, including startups and companies entering the global market. He received both his LLM in taxation and his JD from the University of Denver Sturm College of Law.

**Coordinating Editor:** John Ridge, john.ridge@outlook.com

### NOTE

1. Clio, *2023 Legal Trends Report*, <https://www.clio.com/resources/legal-trends>.

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