



**Montana Legislative Services Division**  
**Office of Research and Policy Analysis**  
**David D. Bohyer, Director**

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May 14, 2016

TO: Members of the Task Force on State Public Defender Operations  
FROM: Dave Bohyer, LSD Research Director  
RE: Options to improve retention

The Task Force on State Public Defender Operations has asked staff to identify options to improve retention of OPD staff and contractors. Please accept this memo as my response.

Introduction

Studies on employee retention and turnover, two sides of the same coin, typically indicate there are a handful of reasons that employees stay with or leave employment. Some of the primary reasons employees leave include:

- lack of opportunities for professional development;
- inadequate compensation;
- boredom/lack of challenge;
- poor work/life balance or job stress;
- poor management and unfair treatment<sup>1</sup>

It follows, then, that if the reasons employees leave an employer can be remedied, retention will be improved and turnover reduced. Quoting and paraphrasing liberally from articles written by Dr. Jevon Powell, Scontrino-Powell Management Consultants, by Amy Marcum<sup>2</sup> of Insuperity, an HR management solutions company, and by Aoife Gorey of Profiles International, also an HR management solutions company the roots of turnover and options for increased retention are discussed below.

Lack of Opportunity

People do not reach a point in their life and stop developing. Human development occurs throughout the lifespan, which is why employees who become stifled, stunted, or stuck in their jobs are the most likely to find different work. Whether it is professional or personal advancement opportunities, a significant percentage of employees leave their jobs because they feel that there is not enough opportunity for advancement within the company or

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<sup>1</sup> This list was taken from an online article, "Top 5 Reasons for Employee Turnover, by Dr. Jevon Powell, Scontrino-Powell, Management Consultants, <http://www.scontrino-powell.com/2012/top-5-reasons-for-employee-turnover/>, but similar lists are prevalent in the literature. See also: "Median employee tenure unchanged at 4.6 years in January 2014", U.S. Department of Labor, Bureau of Labor Statistics, September 2014, online at [http://www.bls.gov/opub/ted/2014/ted\\_20140925.htm](http://www.bls.gov/opub/ted/2014/ted_20140925.htm), and "5 Causes of Employee Turnover & Ways to Combat it", by Aoife Gorey, Aug 19, 2015, online at <http://info.profilesinternational.com/profiles-employee-assessment-blog/bid/104161/5-Causes-of-Employee-Turnover-Ways-to-Combat-it>

<sup>2</sup> "4 Reasons For High Employee Turnover", by Amy Marcum, Insuperity, online at <http://www.insperity.com/blog/4-reasons-for-high-employee-turnover/>

department. After being overlooked for a period of time, an employee sees his or her duties as redundant and will, more likely than not, start looking for a new job. Employees in today's workforce want to develop themselves into the best that they can be. They want to expand and polish their skills, abilities, and experiences. Employees who feel restrained or get bored will eventually start looking outside of the organization to fulfill their advancement needs. This boredom is also a result of poor job fit and can be avoided using effective recruitment and hiring processes.

#### Remedy Options

- Create career ladders for employees. Each rung of the ladder is accompanied by more responsibility, potentially more-varied work tasks, sometimes supervision of other employees or projects, often additional work, and almost always additional pay.
- Provide opportunities for training that allow employees to enhance existing knowledge, skills, and abilities or to gain new knowledge or skills.
- Examine and improve recruitment and hiring processes to ensure that the available tools and processes are producing the desired results, i.e., employees who are a good fit with the agency.

#### Inadequate Salary and Benefits

Although a paycheck is a powerful motivator, it should never be the only reason for coming to work day after day. Even so, employees expect to be paid market rate (by industry comparison) and if they feel that they are being underpaid, they will start looking for employment elsewhere. Also, with rising healthcare costs, health insurance benefits are extremely important, particularly to lower-paid staff whose disposable income may be stretched by high deductibles, co-insurance, and copays. Lack of benefits or subpar benefits can also drive an employee away. No matter how much someone loves working for an employer and believes in the product or service he or she is responsible for, employees are generally aware of the "going rate" for the type of work being done and would be personally and professionally imprudent to toil for significantly less than market compensation, including salary and benefits.

#### Remedy Options

- Ensure that the compensation being offered, including both pay and benefits, is competitive, locally for sure, but also regionally. OPD management should review position description for completeness, accuracy, and currency, and ensure that the state's salary survey is such a manner that OPD staff positions are paid at levels competitive with the market. OPD could pursue a compensation plan that would be detailed enough to provide insight into OPD employees' outlook on their pay.
- In addition to traditional "pay and benefit" compensation, some employers also opt to offer additional perks such as flexible schedules, remote work privileges, on-site fitness rooms or day care, discounts on services or travel, and employee assistance programs. The State of Montana, as employer, offers some benefits typically found in the legal workplace, but OPD may be able to enhance existing benefits or offer new ones.

#### Lack of Recognition

A lack of recognition is reportedly another reason why may employees leave their jobs. Not only do employees want to be monetarily compensated for the job they are doing, they also want to be recognized when they are doing that job well. When an employee starts to feel like their efforts are going unnoticed, they may become less productive or move on to another company where they will receive more recognition.

### Remedy Options

- OPD could develop employee recognition programs ranging from "Employee of the Month/Year" awards to financial recognition in the form of performance bonuses. Any type of special recognition can be a motivator for some employees, but can also be a significant de-motivator for others. If a recognition award program is pursued by OPD, it should be carefully crafted and constantly monitored for the effects it may be having on employee morale and performance.
- Employees who achieve a professional milestone or who attain outside recognition for accomplishment could be rewarded with a story in an in-house publication or in a local, regional, or statewide newspaper or through radio/TV, hopefully with the cooperation of the media, of course, but by a paid announcement if cooperation isn't forthcoming.
- For some employees, a 15-minute break to celebrate an accomplishment or milestone by sharing cake and interaction with coworkers will go a long way to assuage the employee's desire to be seen by others as an important part of the team.

### Boredom or Lack of Challenge

High-performing workers need to feel that they are being challenged and are moving forward in terms of professional growth and development. As the employer, OPD managers should take time to meet with employees and be proactive in discussing career and succession plans with them. OPD, like any employer, should be sure to blend in growth and development opportunities into OPD employees' responsibilities when possible. No one wants to feel like they're in a dead-end job.

### Remedy Options

- OPD managers could assign employees to a special project or putting them in an expanded role, such as a team leader.
- OPD managers could build opportunities for the staff to cross-train one another.
- Through effectively communicating with colleagues, coworkers, and subordinates, OPD managers could assess each employee's satisfaction with work assignments and determine what other or additional assignments the employee is interested in, then consider if and how the employee might be redirected, trained or retrained, or reassigned to allow or help the employee to pursue new interests of value to the OPD.

### Poor Work/Life Balance or Job Stress

Employees sometime face (huge) challenges prioritizing between their work and their personal life. Studies show that a poor work-life balance can result in unhealthy levels of stress, unhappiness, and even reduced productivity.

Recognizing when an employee's work and life are out of balance is key to beginning to restore the balance. For some employees, life outside the office can complicate performing even the most basic of responsibilities as an employee inside the office -- consistently showing up to work and being on time. For others, the typical 8 a.m. to 5 p.m. work day doesn't fit the employee's family needs or doesn't fit with the employee's circadian rhythms. As often as not, the employer can accommodate some flexibility for an employee to work an atypical schedule.

There are times in employees' careers when the demands of work require substantial sacrifices at home. Such times should be rare for most employees, but seem to be more frequent for careers in the professions, management, and master-level occupations (think court reporter, master plumber, crane operator). For example, certified public accountants rarely take time off

between March and April 15 and commonly work long hours and long weeks as April 15 approaches. A heart surgeon, particularly in a smaller community, never know when she might be called to intervene to address a patient's heart attack or stroke. For many OPD employees, particularly attorneys, the vagaries of criminal trials as defense counsel can throw a wrench into the best laid plans and often ripple through to other staff who support the attorney most directly affected. The job description may say regular work hours are 8 to 5, 40 hours per week, but the reality of the job may be 10-hour days, 60 or 70 hour weeks, for weeks or months on end. When work places such significant burdens on an employee's time, the employee may respond efficiently and with good cheer, but such a response likely won't last forever.

Another element that can cause significant job stress OPD staff is when an employee is responsible for a certain project or projects, say multiple-count felony trials or dependent neglect cases, for example. The number of attorneys that OPD employs and contracts with is severely limited by the funding that the legislature appropriates to OPD. However, there is no limit to the number of crimes that indigent individuals may commit or the number family crises that cause OPD attorneys to become involved. Moreover, appearances in court are primarily controlled by the judge, who frequently has a docket pending that stretches out years into the future, and who may grow weary of numerous motions to delay proceedings. OPD attorneys, unlike attorneys or other professionals in private practice, have no way to control their individual or aggregate caseloads. OPD attorneys' caseloads truly are at the mercy of the court, where the court has a constitutional obligation to appoint defense counsel and the appointed defense counsel has constitutional, ethical, and professional obligations to the accused, the court and other stakeholders in the cases assigned to the OPD attorney.

### Remedy Options

- OPD managers should do everything possible to ensure that no OPD-employed attorney has a caseload so high or challenging that it precludes the attorney from maintaining a reasonable work/life balance and attempt to spread the agency's workload as evenly as possible.
- Whenever the caseloads of OPD-employed attorneys exceed reasonable levels, the attorneys' managers should request additional resources, either in the form of more FTE attorneys or access to more contract attorneys. If that fails, OPD managers should appeal to the legislature for additional resources or to the court for relief, such as postponing the appointment of OPD counsel until workloads abate.
- The legislature could attempt to provide the OPD with the authority, whenever caseloads become sufficiently excessive, to deny the judicial appointment of OPD defense counsel until additional resources become available. Not improbably, there could be constitutional issues with this remedy option.
- The legislature could decriminalize some infractions, i.e, remove jail time as a potential penalty or sentence, thereby potentially reducing the number of cases assigned to OPD.
- The legislature could establish "hard caps" on OPD attorney caseloads and, based on the caps, provide OPD with sufficient funding to hire an adequate number of attorneys and support staff to professionally and ethically carry out diligent if not zealous defense of OPD clients up to the "hard caps".
- The legislature could appropriate sufficient funding for the OPD to establish contracts with private attorneys that would absorb excess caseloads from OPD attorneys, which would likely require establishing a higher-than-current rate of hourly pay for contract attorneys.
- Montana could attempt to secede from the Union, where, if the attempt is successful, the 6th and 14th Amendments to the U.S. Constitution would not apply.

## Poor Management and Unfair Treatment

It is not unusual that, when interviewed, former employees will say that they didn't quit their job, they quit their manager. As the saying goes, "People leave people, not jobs." The employee-manager relationship is one of, if not the most, important relationships within an organization. Employees can't seem to find the door fast enough when they have to deal with poor management or leadership.

It is important for managers and employees to communicate because management must know the cause of the issue before they can come up with a solution. Knowing the causes of employee turnover is pertinent if an employer wants to develop a strategy that will entice employees to stay long-term. As important as open, frank communication is to employee-manager relations, it is only in rare cases when an employee who would hope to remain employed by and loyal to his or her employer will say to his or her manager, "You stink as a manager!" It is only slightly less rare that the employee would report bad managing to a manager's superior or even to human resources. Blunt honesty in such cases is simply too risky to the employee.

### Remedy Options

- The Public Defender Commission, OPD executives, and Legislature could collaborate on a plan to ensure that every OPD employee who is assigned management or supervisory responsibilities receives adequate management training and is diligently evaluated on his or her management knowledge, skills, and abilities.
- Management and Administrative Policies should be kept up to date and adhered to in every corner and by every employee of the OPD. Supervisors could, through periodic evaluation, determine how well or poorly each responsible person executes the policies and take appropriate action whenever an individual's adherence or execution falls below expectations.
- The OPD is an agency with nearly 200 FTE staff, yet it has only a shadow human resource presence, relying instead on the Department of Administration for human resource support. The OPD could explore options for enhancing internal human resources capabilities.
- If the Public Defender Commission determines that a program is not functioning effectively or that an executive manager (appointed by the PDC) is not performing at or above expectations, the PDC could take appropriate action in a timely manner.

## Other Remedy Options in General

### Hire Right the First Time

Hiring for job fit is the biggest favor an employer can do for the company or, in the case of OPD, the agency, and for both the employer and the employee. There are many products for and many services available to managers to identify certain characteristics that are not revealed in a traditional interview setting. The products and services can help to determine whether a candidate can perform the duties of the job, whether the candidate will love what they do, and if the candidate will be a good fit for the agency.

### Build a Better Onboarding Process

"Onboarding", which used to be called "orientation", is one of the most valuable processes in the employee lifecycle. It is of utmost importance to not only create but to use a successful onboarding program. OPD's onboarding process should be simple yet thorough and effective because it helps set the tone on an individual's first day and hopefully, for years to come.

### Practice Team Building

Building a strong team is not an easy thing to do and certainly does not happen overnight. Team building gives employees a chance to get to know each other outside of the high stress work environment. Any number of programs can show participants how, as a team, they score on the key components of the team model: trust, conflict, commitment, accountability, and results. It helps professionals and their organizations learn what it takes to build a truly effective and cohesive team.

### Summary

There are some fairly common reasons why employees leave their employers, which suggests that if those reasons are addressed in a positive manner my executives and, for the OPD, policymakers, turnover can be reduced and retention improved. Only by determining the reasons why OPD employees leave the agency and positively addressing those reasons can OPD or the Legislature expect turnover to decline and retention rates to improve. Perhaps not all, but more than likely virtually all of approaches to "positively addressing the reasons" for high turnover and low retention will require additional funding.

Respectfully submitted.

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