

## THE CONTRACT E-DISCOVERY STAFFING REVOLUTION CONTINUES

The reasons for massive adoption of contract staffing solutions are further illustrated by scalability, managed services, tool consolidation, and the millennial factor.

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Part one of this article, *Top Talent—Why Own, When You Should Loan*, exposed how national hiring trends, changes in talent supply and demand, a concrete ceiling of growth for project managers and lack of management roles in the e-discovery job market have all led to the adoption of contract staffing models. Part two will illuminate how the millennial factor, need for scalability, managed services and tool consolidation will also drive temporary hiring.

### Paid Overtime

In 2011, close to 52 percent of open positions in the global e-discovery job market were with law firms. By 2015, trends in hiring had shifted dramatically, giving the service providers and consulting firms a whopping 64 percent of the net

new e-discovery employment, with law firms dropping to less than half that at 31 percent!

Much of the talent who started at law firms but have since matriculated over to a vendor remember the days when they were paid for their overtime. Almost all law firms pay their analyst, specialist and coordinator litigation support staff time-and-a-half after 40 hours a week (some also pay straight time from 35 to 40 hours). Very few vendors pay overtime or hire nonexempt employees (though some try to create bonus plans that approximate overtime, generally failing to match dollar for dollar). These technical and operational e-discovery professionals have seen noticeable decreases in their total compensation as the industry has matured, placing less focus on technical execution and more



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emphasis on consultative project management skills.

The motivation for these technical professionals to move to a career as a contractor may simply be to regain the fruits of paid overtime again, as the only predictable thing in e-discovery is the unpredictability of hours when litigation spikes. In a contract role, analysts, specialists and coordinators can often



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make the same total compensation in six to eight months as they would in a full-time permanent position over 12 months.

### Millennials in the Middle

With the greatest volume of hiring in e-discovery squarely in the middle of the market with consultants, project managers and analysts, the generation identification of the largest talent pools in the industry has shifted from Gen X to millennials since 2010. Millennial lifestyle desires are undeniably skewed toward freelancing.

Freelancers Union and Elance-oDesk, in the same survey quoted in Part 1, found in 2015 that “38 percent of millennials are freelancing” in the United States. Millennials also expressed “the most confidence about this new way of working, with 82 percent of young freelancers saying they’re optimistic about the future of freelancing.” Hiring managers in e-discovery will find that this kind of project-to-project lifestyle not only

appeals to the exact age range and skill set they are seeking to hire most frequently, but it suits the needs of their business in this new market.

### Scalability and Managed Services

Small vendors and in-house litigation support departments can no longer afford to hire full-time permanent staff whose utilization is not constant. Bench strength is not a luxury vendors, especially the smaller ones, can afford in the costly and competitive world of e-discovery. Contract staffing becomes the perfect solution for these employers when they “land a whale” or find themselves in “bet the farm” litigation.

Even large consulting firms may find themselves in this situation when landing a very large project the likes of Deepwater Horizon or Volkswagen, which may be better suited for contract staffing as opposed to full-time hiring because of unsustainable work and hefty layoffs years later. Keep in mind, layoffs are costly to employers in terms of wasted overhead, unemployment, disability, severance, benefits, loss of institutional knowledge and more. Contract staffing eliminates most of these financial

burdens for the employer when the project ends.

The vast adoption of e-discovery managed service models has also led to a decrease in full-time salaries for project managers in the vendor market, but an increase in the number of project managers hired. Vendors pushing out managed services models now often have to hire three people to every one person they needed five years ago. The margins are diminished for profitability in a managed service model, but the predictability of work from the client is much longer and larger than a project life cycle.

The result from a staffing to salary perspective equates to hiring more people at less compensation for coverage. These days, vendors often cannot hire and train full-time talent fast enough or cheap enough to scale beyond the predetermined scope of their client’s MS agreement when there are spikes in litigation. This also is where contracting comes in to help scale instantly but not in perpetuity.

One additional staffing variable on the managed service model involves the “quality of life” or “burnout” component for existing full-time staff. As the e-discovery industry moves

more toward managed service models, despite many efforts to maintain usage-based models, it will eventually create a more balanced work-life existence for full-time employees in firms, corporations and vendors. In order to maintain quality of life for their full-time employees, e-discovery employers will use contract staffing to meet the spikes in client demand for new projects coming in that are large but may not last forever.

Corporations and law firms can augment themselves or encourage their vendors to scale with contract talent in order to avoid extreme time demands on their existing staff not accustomed to, compensated for or comfortable with excessive overtime. Contract staffing then serves a dual purpose by helping retain the full-time A-list players while avoiding burnout.

### **Tool Dominance**

Yet another reason contract staffing is ripe for e-discovery right now is the rapid consolidation of dominant market technology utilization. From 2004 to 2012, the different tools used by various vendors, corporations and law firms were incredibly fragmented. With talent now

generally trained in the same and similar tools, employers can more easily repurpose and share resources on an ad hoc contract basis. Not every hire requires nuanced knowledge and training within a niche technology anymore. Dominant tools more frequently requested by employers unquestionably include Relativity and Nuix with LAW PreDiscovery coming in a strong third.

The flip side to this paradigm shift is that there is also talent available who decidedly focused on the less popular e-discovery market tools, resulting in their individual billable price point going up due to the limited resources with their technology toolkit. Less frequently requested toolkits, but still experiencing a need for contractors with expertise, include Clearwell, Viewpoint, Concordance, iConect, SQL and Access.

Those who do not use the market dominant tools listed above are typically software companies with service offerings focused on selling their product against Relativity—say Catalyst, FTI's Ringtail and Logikcull, to name a few. These

companies have become much more willing to hire and train individuals full-time on their proprietary systems if they bring a deep understanding of the e-discovery process and technology, since there is no saturation of talent available who already know their tool.

Part three of this series will examine closely how and when law firms, vendors and corporations are specifically augmenting their staff with contract e-discovery talent and what the keys to success are when considering this approach. Part 3 will also forecast the future impact of kCura's move to Microsoft's Azure cloud in shifting the entire focus of the industry toward professional services and contract staffing.

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