

# MANAGING THE RISKS OF STAFF TURNOVER

Losing staff is a perennial headache for law firms. Don't compound the problem with professional negligence claims on their way out the door.



Many law firms are operating at close to full capacity with the result that when lawyers leave, there are limited remaining employees with the bandwidth or expertise to take on the work. In 2022 this issue is likely to be amplified as staff turnover – aka “the great resignation” – is predicted to gather pace with COVID-19 pandemic interruptions stretching into the third year and lawyer’s reviewing their existing work arrangements.

Staff turnover – particularly when a team is stretched – presents a real risk for costly mistakes to be made. The most common mistake LPLC sees following the departure of a lawyer on a matter is missed critical dates because there were inadequate file handover processes and procedures. Contributing factors typically include:

- failure to supervise or review the files of the departing lawyer(s) leading up to departure
- no or inadequate handover notes and failure to record critical dates in the principal and/or incoming lawyer’s diary
- heavy file loads of lawyers taking over that prioritise existing and familiar files over newly inherited files with inadequate handover instructions
- principals mistakenly assuming the replacement lawyer on a file has the same skills and expertise as the departing lawyer and failing to provide the level of supervision required.

## Eight ways to minimise the risk

If a lawyer gives notice that they are leaving your firm, principals should immediately start planning to prioritise the safe transition of work. This can be difficult when you already have a full workload, but properly managing a changeover is critical to avoiding claims and unhappy clients. Every situation will be different but here are eight key things to consider.

1. As a first step, principals need to review a list of the departing lawyer’s matters to assess the type, complexity and volume of work and determine who the files should be allocated to. Without a good understanding of the work, you won’t be able to make decisions on how to manage the files.
2. The departing lawyer should prepare internal file handover notes for each file which should be reviewed and signed by a principal prior to their departure. The memo should clearly detail:
  - upcoming and other critical dates
  - factual background and key issues
  - current status and next steps
  - client contact details
  - links to all key documents and advice.

Dates should be diarised in the principal/incoming lawyer’s calendar so they aren’t overlooked.

3. Both the departing and incoming lawyers should meet to discuss each file. The earlier this occurs, the better to maximise the opportunity for asking questions and clarifying issues before the departing lawyer leaves.
4. Clients need to be informed about staff changes as soon as possible. Some clients may want to transfer their work to another firm or follow the departing lawyer. Be open and honest

about what you can and can’t do for the client going forward. Don’t overstretch. If you can’t provide them with high-quality service, it is likely to be in their interests and yours for them to go to another firm.

5. When replacing staff, it’s rare that you can find a “like for like” replacement. New staff will have different knowledge, skills and personalities. It will take time and effort to induct them and assess what they can and can’t do. We have seen claims when principals assume that the new person can do what the departing person did, simply because they have replaced them. Ongoing supervision is essential.
6. You may need to wait months to find the right replacement and lots of things can go wrong during that time if existing staff can’t reasonably take up the extra work. Consider the availability and suitability of short-term options such as temporary staff, barristers and locums to get the firm through a difficult spot, noting that these contractual arrangements also create substantial supervision and oversight obligations.
7. With the disruption of someone leaving it may be necessary to reduce new work intake until the firm has employed new staff. Don’t assume you will get an immediate replacement and that there will be little or no disruption.
8. Principals have the responsibility to take proactive steps to manage the situation. It is not realistic to direct or expect departing lawyers to materially advance and/or close all their files before they go. Sometimes they will have mentally moved on and lack the commitment to do the work, or it just won’t be possible to bring all their matters to a conclusion in the remaining time available. Don’t leave it to the departing person to manage. For more assistance in managing the transition when practitioners leave see:
  - LPLC’s checklist : File transition - practitioner is leaving the firm
  - LPLC’s template: File handover list. ■

This column is provided by the **Legal Practitioners’ Liability Committee**. For further information ph 9672 3800 or visit [www.lplc.com.au](http://www.lplc.com.au).

## TIPS

- Now is a timely opportunity to review and update your firm’s file handover processes and procedures for managing the risk of staff turnover.
- Principals should proactively manage and supervise the safe transition of the departing lawyer’s files.
- File handover notes are essential and should highlight upcoming and critical dates, key issues and required next steps.
- Departing and incoming lawyers and/or principals should meet to discuss the file and clarify any issues or questions.
- Critical dates should be diarised in the principal/incoming lawyer’s calendars before the departing lawyer leaves the firm.