

TRANSACTIONS

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Brian H. Levey

Chief Financial Officer and General Counsel
Upwork Global Inc.

Mountain View

Size of legal department:
7 attorneys

Courtesy of Upwork Global Inc.

Unique Lens

CORPORATE
COUNSEL

O&A

As Upwork Global's GC, Brian Levey sees outside counsel as a vital early warning system.

Brian H. Levey has his hands in a little bit of everything at Upwork Global Inc., a Mountain View-based company that hosts an online marketplace for freelance work. He's the company's chief financial officer, responsible for the budget, and the general counsel.

"Both functions typically have to have high, cross-functional visibility," Levey said. "In many ways, we have to know how we can serve as the compass or periscope of the organization, to see around the corners and blind spots faster than other parts of the organization."

Being ahead of the curve is essential, particularly in a company that is dealing with a rapidly expanding marketplace. An October report, conducted by McKinsey & Co. and commissioned by Upwork and Freelancers Union Inc., found that the employment landscape is quickly morphing into a "gig economy."

Rather than working in a traditional 9-to-5 job, 35 percent of the U.S. workforce are freelancing. A similar study from McKinsey surveyed roughly 8,000 working-age individuals (defined as 15 and older) across the U.S. and Europe and found that 20 to 30 percent engage in independent work in a wide variety of sectors, from ride-sharing to freelance software development.

Upwork provides a conduit between freelancers and companies looking to cut costs by assigning work to non-full-time employees.

"Most call it the in-demand economy for users on our platform because they're able to provide such a wide range of services at all value points on the spectrum," Levey said.

Levey has over a decade of experience with rapidly growing online marketplaces, having served in the legal department of eBay Inc. for 13 years. He was brought on as the GC for Upwork in 2013, when it was known as Elance-oDesk Inc., and took on the additional role as CFO when the company changed its name last year.

He recently spoke with Daily Journal Staff Writer Paula Lehman-Ewing

about how his legal background benefits the company, how the gig economy works and why he hasn't left his job.

Daily Journal: When the opportunity to serve as Upwork's CFO arose, why were you willing to take on the extra responsibility?

Levey: It's probably no coincidence that I always wanted to get a JD-MBA. I never actually did because the stock market crashed while I was in college. That sort of moved me away from the business school side because I saw all these Wall Street bankers getting laid off.

But as an economics major, as someone who did their honors thesis on the stock market, as someone who then went to work for the Federal Reserve Board after college trying to analyze stock market volatility, I always had a keen interest in business strategy and I could see the dual role providing not just a professional challenge and an opportunity to learn something new. ... It really gives me a chance to try to provide a unique lens to both foster innovation and mitigate risk and bring that mental model to the table for every decision.

DJ: How does that unique lens set you apart from other GCs?

Levey: I think I'm a lot more aware of return on investment: How can we do more with less; how can we streamline; how can we think about taking on certain risks and not being risk-free? We have to assume there are costs of doing business and in the world we live in, being an innovative company leading the way in its market segment.

DJ: How does being a GC set you apart from other CFOs?

Levey: I probably am more sympathetic to paying higher rates if I can see the higher value than maybe a more customary scenario when the CFO doesn't have the legal background and the understanding that paying more for a particular attorney may actually be a good return on investment even though on its face it appears extremely expensive. That's probably the lens I bring that might be

different than someone without the legal background and experience training and working with outside counsel.

DJ: In your dual role, how do you reconcile driving the company forward and putting protections in place in the middle of a growth spurt?

Levey: I think that's where a lot of the similarities are. CFOs and GCs really need to bring an objective point of view to all matters. How do we stay actively open-minded, seeing various points of view, seeking various points of view while sticking to our beliefs? That then makes us think, hopefully, more strategically given a more accurate view of our customers and what they want, our competitors and what they're doing. There's a lot of overlap between legal and finance. We have the tools for changing behavior in the organization and we think about how we can help the company implement things better, inform before decisions are made, and incentivize the organization to want to make good return on investment-based decisions. It's about creating that robust decision making instead of waiting to be asked. We need to anticipate questions before they're asked. We really prioritize what we are going to stop doing to be able to reinvest and reallocate to things we need to focus on a little more, figuring out not only what moves the needle but what could break the needle if we don't monitor the needle.

My mentor and old eBay boss Mike Jacobson, the former GC at eBay, always used a baseball analogy: The positive impact of the decisions when they're right should always trump batting average, which is the number of times you're correct, because you're really looking at the impact versus the frequency of correctness.

DJ: When you assumed the CFO position did you have to restructure your legal department?

Levey: I've not changed the reporting structure but they've all been empowered to do more and they relish that. With me sort of elevating or working on finance matters as well now, I think the team really stepped

up. I always go back to the idea that good lawyers can do any kind of law and the great thing about being an in-house attorney is the opportunity to not be too much of a specialist, which is something you can't really do at a law firm. I think I've probably taken that a step further. There's a bunch of white space out there with respect to our business and cutting-edge issues.

I have been quite impressed with the accomplishments both the legal and finance team have made in the past year. People know me well enough to know when to escalate something or ask me something but I really do trust the team and the people. I think it's key for a leader to know their blind spots and fill in those blind spots as best as possible and I think that's helped me be able to scale my own work into the finance area as well as legal.

DJ: Does that autonomy carry over into how you work with outside counsel?

Levey: I can't speak for the folks on my team and their own styles in dealing with their counterparts in a firm on a particular matter but once someone has shown me they can do a great job, I'm extremely hands-off. I love to empower those who work with me and I do think that giving folks the leeway is appreciated. I'm not a big fan of micromanaging either the folks on the internal team or external counsel and I'm a big believer that there are extremely able attorneys available outside the pedigree law firms, even more so in the past five to 10 years.

DJ: What firms do you use currently?

Levey: We use Fenwick & West for corporate and trademark issues. We've used Littler Mendelson, Pillsbury Winthrop Shaw Pittman, and Paul Hastings. We've used InfoLaw-Group for regulatory and compliance. For disputes, we've used Hogan Lovells, Cooley and some boutique firms.

We also use AdvanceLaw, which is a new organization essentially created for GCs to identify really good law firms outside the Am Law 20 or "magic circle" firms for every type of

legal project imaginable. When I was at eBay, we were one of their first clients, or in-house companies, to join and since then there have been many others including some household names, but I found the team there to be very helpful. We've also engaged some attorneys from the Upwork platform for legal research and commercial contracts requests. We're really trying to eat our own dog food or sip our own champagne, because in some ways legal work is knowledge-based work and over time could be enabled by the platform. It's still in the beginning stages on our platform and I can see that narrative, over time, really grow.

DJ: What's the biggest thing you want outside counsel and regulators to know about Upwork and the gig economy?

Levey: It is certainly not a one-size-fits-all. I think we just can't be grouped with other companies that have a completely different business model, but for convenience purposes we're sort of grouped with them. So I think it's about education and being proactive and sitting down with elected officials and regulators and telling them how we help small businesses and independent professionals and how we're enabling a lot of the opportunities that are available out there by virtue of having a marketplace where freelancers and clients can connect. Like eBay this is a marketplace that couldn't have existed without the internet. It couldn't have existed without technology. It's a platform that no kind of governance could ever create and you can look at it as creating, like eBay, an opportunity for small, medium and large businesses around the globe to get work done that may not have gotten done otherwise or is now being done in a more efficient manner.

There's a reason why we are not currently dealing with any worker classification lawsuits. It's because our model really enables two parties to negotiate their rates and our business model is such that it's in our best interest for those rates to be higher over time because we take a com-

mission or service fee. Unlike our competitors, we view compliance as a competitive advantage. We are an internet escrow agent and we're regulated by the state of California. Having this escrow service, which requires not insubstantial funds every year, it ultimately gives our clients the payment protection they need and helps freelancers feel comfortable and it helps clients feel comfortable.

We voluntarily implemented an anti-money laundering program. We have audits on that, although we're not required to. Unlike any of our competitors to my knowledge, we are VAT [value added tax] compliant in Europe. Those are areas where I think we're willing to invest the money even though it might be expensive but we have the belief that it's good for business. It'll increase trust on the site and it is raising the bar in everything we do. And looking long term, it can also serve as a competitive advantage.

DJ: Have you come across any conflicts with international individuals or companies that operate in areas outside California and, therefore, have different regulatory requirements?

Levey: No regulators have ever approached us. It's completely proactive and we use our network of outside counsel to be our early warning systems and to keep abreast of the latest developments, whether that's Privacy Shield or VAT. We're in 180 countries and we only have our in-house team on the ground in California so I expect our core firms to be our early warning systems on new developments and, essentially, an extension of our in-house team. We don't have a big legal team or an international legal team in-house. We really do leverage outside counsel in that respect and then it's just trying to ask more questions of them like what they think we should be doing. Do we need to revise our terms of service to fund this development? How should we be thinking about the next two or three years?

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