

Help from the outside

How companies can get the most from outside legal counsel

INTERVIEWED BY ADAM BURROUGHS

Smaller businesses tend not to have the budget for a full-time, in-house general counsel. Fortunately, there is another solution to help them avoid the common, and costly, legal pitfalls of being in business.

“Working pre-emptively with an outside general counsel on matters such as commercial contracting, general corporate governance, mergers and acquisitions, and vendor and supplier agreements reduces or eliminates the chance of encountering legal issues down the road,” says Elizabeth G. Yeargin, an attorney at Brouse McDowell.

Smart Business spoke with Yeargin about the many ways businesses can utilize outside general counsel.

What is corporate counseling, and why should an attorney deliver this service?

Legal counsel’s expertise is not limited to law. Through a legal lens, they can also offer practical business advice. For instance, an outside general counsel can participate in strategic and succession planning, disaster recovery and crisis management.

An outside general counsel may also have a background in the laws of a specific industry — tech or manufacturing, for instance. Generally, if it’s a highly technical industry that requires more than a general business law background, it’s better to work with someone with specialized trade knowledge.

These relationships have the added benefit of attorney-client privilege. Attorneys are bound by ethics rules and are prohibited from disclosing information received from their clients, which is different from other non-attorney advisers. Even emails between the attorney and client are privileged so long as outside parties are not included in the address line.

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Which companies benefit most from working with an outside general counsel?

Smaller, closely held companies may benefit most due to the significant costs involved with staffing an attorney in-house, especially if those companies don’t have the volume of legal work to justify that expenditure. However, most inevitably have legal issues of some type that arise frequently enough that they need a trusted legal adviser who knows their specific business and can walk it safely through a legal minefield, or handle a one-off issue, such as selling a business or contracting with a difficult customer.

Who within an organization should work with an outside legal counsel?

Often an outside general counsel works directly with the CEO, CFO or president. There are, however, businesses that make outside legal counsel available to employees at other levels of the organization. For instance, sales managers or vice presidents are sometimes tasked with working directly with legal counsel when they have questions regarding supply agreements, procurement contracts or other sales-related obstacles.

It comes down to cost, need and comfort level.

Ideally, what should the general counsel-company relationship look like?

It’s best to be proactive, because it’s

better to spend a little money up front to prevent much more costly issues later. That’s often the case with supply agreements and vendor contracts, which are easy to enter into but hard to get untangled from once a contract is signed. Unless there’s a compelling reason — corporate compliance, for instance — outside counsel doesn’t likely need to be in attendance for every company meeting. But, especially when it comes to board or strategic meetings, it can be beneficial for the company’s lawyer to have a seat at the table to field legal questions and stay apprised of the general affairs of the organization. A lawyer never likes to find out through the news that a client is embroiled in a legal issue.

It’s a good idea for a company to hold regular checkups with its legal counsel so that he or she can keep track of the company’s current challenges. These checkups could be in the form of monthly meetings with the entire corporate management team or a brief phone call or lunch with the CEO. Counsel will, ideally, keep a running checklist of ongoing projects, discuss issues that are pending and those that have been resolved, and discuss upcoming strategic initiatives to keep everything at the forefront. ●