

Is It Time For Your Company to Hire In-House Counsel?

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Your company has seen nice growth over the past five years – revenues are up, you are employing more people and you see new opportunities ahead. You are beginning your budget planning for next year. Your eye lights on the six figure line item that reads: “legal expenses.” And you ask yourself: Is it time to hire an in-house attorney?

It might be. The right in-house counsel can provide a number of advantages over outside counsel. The most important of which are that in-house counsel, by being closer and more involved, can know your business better and therefore can respond more quickly and more efficiently to your everyday legal needs.

There are eight factors companies should weigh when determining if the time is right to hire in-house counsel:

1. Are you in a government-regulated business or industry?
2. Do you have more than 100 employees?
3. Do you have shareholders and investors (such as venture capitalists) with different financial stakes and interests?
4. Do you enter into contracts with terms that vary substantially from one deal to the next?
5. Do you contemplate going public within the next five to ten years?
6. Are you or will you be developing valuable intellectual property?
7. Is the person now in charge of your legal matters stretched too thin or diverted too often from other important work?
8. Are you regularly incurring more than \$500,000 per year in legal expenses?

If the answer to any of these questions is yes, it’s time to consider in-house counsel.

Once you’ve arrived at this conclusion, the next step is to draft a job description. This will guide your decision about whether your objectives can be met with a new in-house attorney and who might do the work best. Will you be looking for someone whose primary function will be to guide your human resources department? Will you be looking for someone who knows patent and trademark law? Will you be looking for someone who can help negotiate and finalize your most important supplier or customer contracts? Do you need someone who already has a good

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understanding of the laws and regulations that apply to your business? Will you be looking for someone who can help you fulfill your fiduciary duties to shareholders and your contractual obligations to your lenders and other investors? The answers to these questions will help you write a job description that is realistic and that will point you to the best candidate.

Your next step is to call the two very best sources for the candidate you need. Your first call, believe it or not, should be to the law firm you currently use. If they've been paying attention to you and your growing legal needs, your outside counsel will not be surprised by your call. And they will want to work with you to identify the very best candidate for your needs. Why? Because they will want to maintain a continuing relationship with your growing business, even as some of your legal work moves in-house. Placing an associate or colleague within your company is one way for your current firm to keep that bond strong. In fact, as more and more law firm partners and associates see the advantages of working as in-house counsel, you might discover that the attorney you call at your existing firm is looking to make a move himself or herself.

Your second call should be to a credentialed legal recruiting firm. Insist on a recruiting firm that belongs to the National Association of Legal Search Consultants and that subscribes to its Code of Ethics. Don't bother with others. A legal recruiting firm without these credentials is likely to be disappointing. An ethical, experienced recruiting firm will bring you only candidates who match your needs and who are likely to be contributors to the long-term success of your business.

Sounds straight-forward and easy, doesn't it? What can go wrong? Here are the five most common mistakes.

1. Unrealistic expectations. The law is complex. No one lawyer can know every single thing about every aspect of the law. A "generalist" who becomes your general counsel and, eventually, your trusted adviser, can add enormous value to your enterprise. But don't expect your new general counsel to be a securities lawyer, an environmental lawyer, a tax lawyer, and a labor and employment lawyer all wrapped into one. "Jack of all trades, master of none," can be a dangerous beginning, leading to costly mistakes. Respect the fact that whoever you hire as counsel cannot know everything and cannot solve all your legal problems alone.
2. Not hiring someone with enough of the right experience. Fresh law school graduates are eager to learn and they will be willing to come to work for you at lower a salary than more seasoned professionals. But, as with everything in the world except lottery tickets, you "get what you pay for." A young lawyer with growth potential might be the right choice, but consider factors other than cost when making the decision. You might find that a senior lawyer, perhaps looking towards retirement in 5-7 years, will give you much more value.
3. Not investing the time. As with every new hire, to really help your new counsel become effective and successful, you will need to invest time in teaching him or her about how your

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business works. What makes you successful? Where are your business risks and pitfalls? Who are your best customers? Who are your most important suppliers? What and who are your most valuable resources? What are the critical aspects of your operations? Only with that knowledge can your new in-house counsel provide you with the legal advice you need.

4. Not understanding professional obligations. Lawyers are licensed professionals who, as conditions of keeping their law licenses, must adhere to ethical obligations. For example, a lawyer for a company has ethical duties to shareholders that, in cases of conflict, supersede their obligation to follow contrary instructions from the CEO. Take time to understand those ethical obligations and the limitations they might impose on your expectations.
5. Expecting in-house counsel to eliminate all outside legal costs. Your new in-house lawyer will not be able to eliminate all outside legal expense. There will be times when you will need either the specialized legal knowledge that law firms provide or the additional resources they can provide for big projects. Trust your new general counsel to know when it is best to call for help from your law firm and to help you manage the expense of those consultations. But do not expect that you will be able to eliminate all outside legal expense.

Hiring in-house counsel, teaching them about your business, and then involving them in your important business decisions, can help your growing company prosper. Is it time to consider hiring in-house counsel?

BIOGRAPHIES

Reid Phillips and Sue Young are partners in the business law firm of Brooks, Pierce, McLendon, Humphrey & Leonard, LLP. Reid Phillips represents businesses and business owners in litigation. Sue Young advises businesses of all sizes, primarily in transactions and general corporate business matters.

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