

5 Things Businesses Need to Do If They Think They're About to Be Sued

Legal Alert
October 19, 2017

How prepared are you to handle being sued? The shock of a lawsuit often catches businesses off guard, leaving them vulnerable to complications that could have been easily avoided. Having a plan and acting swiftly can go a long way in terms of limiting your exposure, minimizing unnecessary case hiccups and maintaining a healthy morale across your organization.

Here are five pointers for businesses who believe they are on the brink of a lawsuit:

1. **Immediately Contact Legal Counsel.** Contact your legal counsel immediately and ensure that you have litigation counsel with expertise in the area. In-house counsel or your regular business attorney may not have the skill set needed for specialized litigation, such as patent infringement disputes, securities suits, or governmental claims/ investigations. Other than garden-variety litigation common to all businesses (e.g., vendor disputes, employment/labor issues, etc.), management should seek out legal counsel with the reputation and experience in handling the type of suit you're anticipating. The sooner your legal team is in place, the better informed management can be about its options and strategies in the expected litigation.
2. **Establish a "Litigation Hold."** Once suit is anticipated, consult with your company's IT manager to suspend all automatic data (i.e., email) purge protocols. Companies have an obligation, once a claim is made or is reasonably anticipated, to preserve all relevant data. Claims of "spoliation of evidence" (the willful destruction of evidence) are becoming more common, where a business fails to ensure that its routine data purging protocols are suspended pending resolution of the dispute. The scope of the Litigation Hold can be tailored to the demands of the case with the assistance of litigation counsel.

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- 3. Establish a Litigation Committee or a Management Liaison for the Litigation.** This serves the dual purposes of ensuring a single point of contact for your company (thus avoiding inconsistent messages from the company) and allowing the rest of the company to continue to tend to business without the daily distraction of the litigation buzz. Make sure all company personnel knows to refer all outside inquiries to the management liaison.
- 4. Determine the Scope of the Expected Suit and Notify Your Insurers.** In conjunction with litigation counsel, an early assessment should be made of the potential consequence of the suit and its impact on the company. Also, put all company insurers on notice of the claim. Oftentimes management is swept up in the tumult of litigation and forgets to examine whether it has insurance coverage for the dispute. Promptly notifying your company's insurers of the claim or suit will avoid later disputes over the timeliness of notice and the company's entitlement to coverage (payment of defense costs and any future settlement/judgment of the case).
- 5. Have a Communication Plan.** Communicate with company personnel to prepare them for news of the anticipated suit and to assure them that management has a litigation team prepared to protect the company's best interests. Not only can publicity from a lawsuit damage a company's brand, it has the potential to drag down morale among company employees. Failure by management to acknowledge the suit or to communicate with your employees can make matters worse. Simply acknowledging the anticipated suit will assure employees that management – rather than sweeping problems under the rug – is being proactive in sharing information affecting the company. In cases where the anticipated suit is likely to become a media story, management should consider whether to consult/retain a public relations advisor to help manage the company's message about the suit. Litigation counsel often has experience in dealing with “crisis PR consultants” and may be able to provide management with recommendations.

*Joe Arellano's five tips originally appeared in an article titled, “[What to do when you're about to get sued,](#)” in the October 13, 2017, edition of the *Portland Business Journal*.*