

## When Should A Company Hire Its First In-House Counsel

*By: Leslie White*

From the moment that a company is created, there are legal matters to be handled. As it grows, those legal affairs become more complex and increasingly important to its survival. That said, more often than not, attorney are considered overhead in a corporate situation. Therefore, before companies are ready to pull the trigger and hire, they need to determine how this in-house counsel will contribute to the bottom line or at least no add significantly to it. So when should a company hire its first in-house counsel? Making the switch from outsourcing legal work to hiring a first in-house counsel requires asking a few questions. While there isn't a one-size-fits all answer, here are some thought about when hiring an in-house counsel becomes the right solution for a company:

- Company sales exceed \$10 million per year and/or headcount exceeds 250.
- Company provides a service or sells a product that can cause great physical, emotional, or financial harm.
- Company owns and/or leases several properties.
- Company deals with a high volume of contracts with vendors and clients.
- Company is in a regulated industry, or one that will be.
- Company is heavily involved in the purchase, sale, and/or development of valuable intellectual property.
- Company is contemplating going public.
- Company is facing a serious legal/PR problem that is likely to linger.

### **The Advantages of Having an In-House Counsel**

One of the main advantages of having an in-house counsel, as opposed to an outside counsel, is that this attorney will have the opportunity to be involved with the business, and therefore be present at the very initial stage of any project or development. As a part of senior management, this in-house counsel will be able to advise the company at the onset of any project, and best shield from potential liability before any significant time and resources have been committed.

In addition, the in-house counsel will have more direct and continuous contact with managers and other employees throughout the company, which will help him identify and focus on issues that outside counsels are not able to spot or address early enough in the process. Because in-house counsels are involved in the business and able to develop more personal relationships with company employees and don't charge for their time on an hourly basis; they are more likely to be pulled in on matters before problems begin, as opposed to outside counsels that are consulted when matters have become critical and the expense clearly justified. In short, outside counsels can come into the process early, limit liability before it has a chance to develop, and can identify issues that outside counsel may not be able to based on their relationships and status within a company.

### **What Kind of First In-House Counsel to Hire**

When a company is ready to hire, the next question becomes what kind of in-house counsel it should hire. It depends largely on the type of work and company budget. There are instances when a company has a modest budget and more routine legal work, such as reviewing contracts or overseeing regulatory compliance, when it chooses to hire a more junior-level attorney rather than a GC. In terms of legal

practice, again it depends on what the main concerns are. Technology companies often hire patent counsel first. Still other companies may make the decision to hire a GC on a permanent part-time basis. The most popular and sensible choice for companies seeking to hire their first in-house counsel is to focus on hiring a generalist. The legal affairs of most companies span a wide range of issues ranging from business and employment, to tax and litigation.

### **What to Look for When Hiring an In-House Counsel**

Most companies look for attorneys that have had several years of experience at a major law firm. This can be a good indicator that the attorney is well trained. In general, it is more difficult to get good training in corporate law departments because there are fewer resources available and attorneys to learn from. Typically, an attorney with at least five years of law firm experience will be able to work fairly independently with fewer resources, and have had exposure to enough matters to know what level of expertise is necessary for an issue, and when to reach out to outside counsels. Prior in-house experience demonstrates that the attorney is accustomed to working closely with managers and finding workable business solutions.

Prior in-house experience within the same industry can also ensure that the attorney is familiar with the business and will need little time to become accustomed to it. It also presumes that the attorney knows how to manage expectations and can demonstrate over time how their legal skill set contributes to the collective goals of the company. It also helps in terms of compensation level and understanding of the function, which will require some adjustments from an attorney with only law firm experience. Finally, prior in-house experience indicates that the attorney has experience building strong working relationships company-wide, managing outside counsel, and controlling legal costs.

Ultimately, what kind of in-house counsel a company can or wants to bring in comes down to money. The company must be able to determine how this in-house counsel will contribute to the bottom line and/or become an instrumental part of their risk-management strategies. An effective in-house counsel will protect a company from liabilities that far exceed his/her salary, and may contribute to the bottom line for generating revenues through the use of intellectual property or in the identification of corporate opportunities. The key question that must be answered is whether bringing an in-house counsel in some capacity is a cost-effective measure for the company in the short and long run. In today's improving economy, many companies are embracing the incredible cost savings associated with bringing more legal work in-house, a trend that is likely to continue.

*© 2015 ESQ Recruiting LLC. All rights reserved.*