

INFORMATION & INSIGHTS

Six Ways to Better Manage Litigation and Your Business





Consider these steps as a starting point to avoid litigation:

**1**

Choose the right entity for your company.

**2**

Protect the team and the organization.

**3**

Know the best way to deal with non-competition agreements.

**4**

Stay current on state variances for legalizing medical or recreational marijuana.

**5**

Decide how to deal with interoffice relationships.

**6**

Protect trade secrets.

Introduction

Companies exist to satisfy a need, solve problems, and help people. Of course, companies also exist to create profit, while also providing a livelihood for members of the team.

An unexpected lawsuit causes disruptions. It can lead to poor morale. It can take valuable time away from your company's core business, especially because a court possesses the power to award damages or possible injunctive relief that might restrict what a company can or cannot do. It is expensive in terms of time and resources, as well as energy and stress.

On the other hand, effectively managing or altogether avoiding business disputes has the power to dismantle barriers, support and empower employees, safeguard assets, promote cost-effectiveness and encourage success. It allows companies to avoid troublesome legal traps that can derail profitability - and unleash the best your employees and company have to offer.

It is the goal of business leaders and counsel to anticipate, hedge against, and overcome any legal obstacles that might restrict a company from fulfilling its mission.

This eGuide aims to shed light on common legal issues and illuminate a smooth path through them. It will explain the value in tackling legal concerns upfront to more intentionally safeguard your company.

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1. Choose the right entity for your company.

You can set your company up for success from the beginning by giving thoughtful consideration to entity selection. A good attorney will take the time to understand your business and what legal entity aligns with your plans, goals, and objectives. Distinct characteristics exist as between the available entity structures and you should examine the legal ramifications, protections, and tax situations for each.

For more on entity selection, view our presentation [here](#).



tip

Companies in Texas will benefit from recently reduced administrative burdens of filing an assumed business name, commonly called a “dba” or “doing business as” name. For more on this and to see what entities it applies to, visit the [BoyarMiller ViewPoint](#).





2. Protect the team and the organization.

Remember that people comprise the team, and in managing people there can be a flow of issues as unique as the personalities involved. Employment policies can ensure your company is complying with the law, while also providing a framework by which your company can consistently operate using organized standards and guidelines. They are also a great way to set expectations from the outset.

Make sure you know the legal implications of both – such as who performs the background check (your company or an outside organization).

Do not be sloppy with employment processes such as hiring and onboarding. Consider your background check and drug testing policies. Make sure you know the legal implications of both – such as who performs the background check (your company or an outside organization). There are laws to protect applicants from discrimination and procedures that must be followed through the Equal Employment Opportunity Commission (EEOC) and the Fair Credit Reporting Act (FCRA).

It is important for both the company and the employee to make certain your company is abiding by new laws. For example, in 2020, an update to federal

labor law goes into effect relating to exemptions from overtime pay for salaried employees. The threshold to classify someone as a salaried employee was raised to \$684 per week.

Source: Labor Standards Act (FLSA), 2020 Update

For more on employment law considerations, view our presentation [here](#).



\$684

The threshold to classify someone as a salaried employee was raised to \$684 per week in 2020.



3. Know the best way to deal with non-competition agreements.

As you move through the hiring process, be mindful of non-compete agreements. An employment acknowledgement letter is a valuable tool to clearly define expectations and, once signed, can greatly reduce issues arising from a prior employer while also providing guidance for managers.

Communication is the key to working through these issues. Additionally, do not put your company at risk with a boilerplate employee acknowledgment agreement. It is wise to seek guidance from attorneys with broad industry experience combined with deep knowledge of employment law.

Find more insights on non-compete agreements [here](#).



Additionally, do not put your company at risk with a boilerplate employee acknowledgment agreement.



4. Stay current on state variances for legalizing medical or recreational marijuana.

Marijuana is illegal at the federal level and in Texas, yet the number of states allowing broad medical and recreational use is growing. Companies with locations across many states must consider the employment of team members who operate heavy machinery or a fleet of vehicles as a part of delivering their product or service. Operating while impaired has the potential to harm employees and others. And companies need to protect assets – both material and human.

While medical marijuana use may be tolerated, employees are not offered much protection under the Americans with Disabilities Act (ADA). Such is the case in Texas. The Compassionate Use Act allows for doctor-prescribed medical use but does not provide employment protections for the employee, and the employee does not have to be accommodated at work.



11
states

Marijuana is legal in
11 states as of
January 1, 2020.



Prepare for more change ahead as marijuana becomes more socially acceptable. While protection and accommodation may not be legally required for the employee, companies need to take care if termination occurs. Company leaders need to stay informed to make sure that they are implementing policies providing comprehensive protection from risk.

As of January 1, 2020, the scoreboard reads like this: marijuana is legal in 11 states (Colorado, Washington, Alaska, Oregon, California, Maine, Massachusetts, Nevada, Michigan, Vermont, and Illinois) and Washington, D.C. [In 2020, legalization is on the ballot in the following states:](#) New Jersey, New Mexico, New York, Vermont (for retail sales), Arizona and Florida. Companies with operations in those states, stay tuned in this election year.



5. Decide how to deal with interoffice relationships.

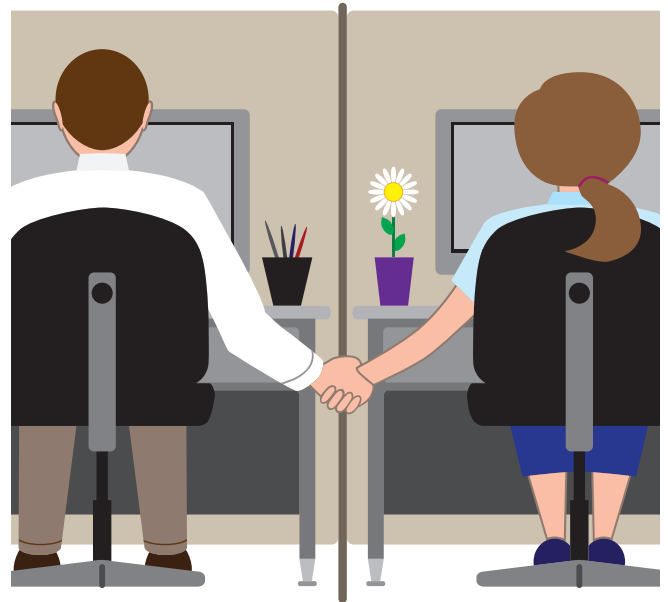
Consensual interoffice relationships – and their potential break-ups – have the power to create quite a tangle in an organization.

There's much to consider on this subject – such as what your company will allow, what you will require employees to do or disclose and when, and how to deal with managerial responsibility of the parties to such relationships. It is best to communicate clearly when forming policies and acknowledgments.

A consensual romance acknowledgment provides direction for employees and managers. A signed agreement outlines topics like:

- The relationship not having a negative effect on the work environment;
- The possibility of a move for one of the couple;
- Claims of sexual harassment.

An employment law attorney understands your unique human resources situation and will guide your policy and language for the agreement. Read more about “love contracts” [here](#).



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6. Protect trade secrets.

Your team puts valuable time and energy into the products and services your company markets. Honor that investment with a strong non-disclosure agreement (NDA) to protect your intellectual property.

An employment law attorney will take care to look into sales contracts and licenses for safeguarding, as well as trademarking to ensure marks are protected. Read about a trademark court case [here](#).

A strong non-disclosure agreement (NDA) will protect your intellectual property.





Stay Out of the Courthouse to Help Your Business Thrive

These considerations are a good start toward avoiding and proactively managing potential litigation. From entity selection to employment concerns to protecting intellectual property, there is value in upfront legal counsel that works to mitigate risk as much as possible while providing recommendations and guidance specifically tailored to you, your business, and the challenges, obstacles and opportunities that lay ahead.

Invest in the time to find a trusted legal partner, one with strong expertise and a thorough understanding of your business. The right attorney is a valuable partner, a problem solver, and someone who can provide invaluable guidance and counsel that avoids headaches, minimizes legal fees, and saves various disruption over the life of your business.



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About BoyarMiller

Our mission is to provide counsel beyond expectations, build lasting relationships, and make a meaningful difference in people's lives.

BOYARMILLER'S LITIGATION PRACTICE

Our goal is to serve clients as a partner to ensure a prevention-first approach.



Our trial and appellate team begins by understanding our clients' objectives. Then we develop an effective strategy to position a case for trial and to achieve the desired outcome. Our litigation capabilities are broad, and our clients are diverse, including business entrepreneurs, real estate developers, lending institutions, and public and private companies.



We recognize that our clients' interests are not always served by being involved in litigation. We address issues in a timely manner, while effectively accomplishing the desired outcomes.



Read more about our recent [business litigation representative matters](#).

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