

How To Know When You Need a Lawyer (and How To Find the Right One)

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A risk-reward dynamic any entrepreneur must learn to balance is deciding when your firm needs a lawyer. Had Personal Software filed a patent on its app Visicalc, for example, Visicalc would today likely be a household name instead of Excel. Having too high a tolerance for legal risk may plant the seeds of your company's demise. Too low a risk tolerance, on the other hand, will inflate your legal budget, cutting into profits and inhibiting growth. A layer of fog further complicating this balancing act is the fact that *knowing whether you need a lawyer requires legal knowledge*.

To help dissipate that fog, this article will: (1) point out some red lines that should never be crossed without your hiring an attorney; (2) lay out some guidelines you should otherwise keep in mind as you seek to approximate the optimal level of acceptable legal risk; and (3) lay out additional guidelines for finding a lawyer who is the best fit for your particular situation.

WHEN HIRING A LAWYER SHOULD MOVE TO THE TOP OF YOUR TASK LIST

Everyone knows you need a lawyer when you are sued or arrested, but some circumstances urgently requiring legal representation may not be so obvious. If you or your company are in any of the following situations, hire a lawyer as soon as possible, and certainly before taking additional steps on your own:

- You are seeking investment for your company. Securities laws are complicated and draconian. An investor-financing misstep could lead to insolvency or jail.
- You are developing potentially valuable intellectual property. IP lawyers are expensive, but obtaining well-drafted patents, trademarks, and copyrights are actually relatively inexpensive ways to deepen and widen your

moat.

- There is acrimony among you and your business partners. People who resent you may want to hurt you. Talking with a lawyer will help you identify where you are vulnerable, hopefully long before any gloves come off.
- An employee complains of discrimination or sexual harassment. If you do not have an experienced and qualified HR team, you need sound legal advice to respond optimally to any complaints of workplace discrimination.
- You need to terminate an employee who previously complained of discrimination or sexual harassment. Firing employees because they have opposed workplace discrimination is illegal. Sometimes, however, you need to terminate an employee who has engaged in this (or other) protected activity. A lawyer can help you terminate such employees with minimum exposure.
- A government agency asks you to provide information in an investigation. Even if you are not the target of an investigation, and even if you have not done anything wrong, speak with an attorney beforehand to avoid unnecessarily complicating your situation.
- A government agency informs you that you are the target of an investigation. You should treat a target letter like an arrest.
- A customer has accumulated a substantial unpaid balance. Delinquent customers usually have several unpaid debts. An attorney can help you seek collection and optimize your priority among other creditors in the event of bankruptcy.
- One of your employees injures a non-employee while working for you. Unlike workers' compensation, individuals and companies are liable in personal injury only if there has been a negligent act. Working with an attorney



immediately will help you preserve any evidence that your employee did not act negligently and that your company is therefore not liable.

Though this list is non-exhaustive, it will hopefully nonetheless: (1) help you identify common situations where you categorically need an attorney; and (2) give you a feel for the *kinds* of situations that require an attorney.

RULES OF THUMB FOR IDENTIFYING LAWYER-REQUIRED SITUATIONS

Because risk mitigation is hard-wired into attorneys' brains, we hesitate to acknowledge there are scenarios that have legal implications that non-lawyers can successfully navigate on their own. However, it is undeniable that many cash-strapped businesses somehow make it through the legal minefield until cash flow allows for hiring a lawyer.

It is also undeniable that the law of diminishing marginal returns applies to mitigation of legal risk. Here are four rules of thumb to keep in mind as you seek an optimal return from your legal budget:

- **The larger and more profitable your company, the lower your tolerance for risk should be.** The greater your financial resources, the more you have to lose if catastrophe strikes. Remember that in your balancing act, a fall to one side is not the same as a fall to the other. Allocating too many resources to legal matters exposes your company to rumble strips and a generous shoulder while cross traffic and vertical precipices lie in the other direction.
- **The less ethical or altruistic your activities, the more likely you need a lawyer.** All laws are ultimately an attempt by the state to enforce ethical standards. Accordingly, the more uncomfortable you would be in sharing any business activity with your pastor, rabbi, or spiritual guru, the more likely you should consult an attorney (or avoid the activity altogether).
- **To be on the safe side, you may also wish to consult an attorney regarding any course you foresee damaging another's interests,** particularly if: (1) the damage will be severe; (2) the damage is not merely the result

of identifying a better or more efficient business solution; or (3) the one damaged is a powerful industry player. Damaging another's interests is not illegal or unethical per se, but it can motivate a hostile response, which, depending on the jurisdiction, may include legal causes of action presently unknown to you. Learn whether your house is made of glass before you start throwing rocks.

- **Have a lawyer review any contract you sign.** While you may not need a lawyer for some documented transactions (the cash sale of a vehicle, for example), you should at the very least work closely with legal counsel in drafting your contract templates. Even with a sound template in hand, you should probably consult with legal counsel where there is high value being exchanged or where you are codifying an ongoing relationship. Any ongoing strategic partners are much more likely to approve amending a draft agreement that is still being negotiated than an already-executed binding contract.

Use the same cost-benefit analysis you would with any business decision. How much do you have to gain from a successful outcome? How much do you have to lose from an unsuccessful outcome? How much will legal advice cost? Answers to these questions should certainly be inputs in any decision-making process.

If you are unsure whether you need legal advice, schedule a consultation with a qualified attorney. Many lawyers are willing to provide a free short consultation, especially if they are accepting new clients. Even if there is a consultation fee, tripping over a few hundred dollars now may cause you to pick up a tab for tens or hundreds of thousands later.

HOW TO FIND THE RIGHT LAWYER

The realization that you need to hire a lawyer (or at least consult with one) is only one step in the right direction. Next, you need to look for an attorney. Consider following guidelines in your search for a good fit:

Seek referrals from professional acquaintances

Accountants, financial planners, insurance agents, and other entrepreneurs are professionals who typically interact regularly with lawyers. Because they are

frequent referral sources for attorneys, an attorney referred through this avenue may be especially conscientious of your needs so as not to damage the valuable relationship with the referring source. To avoid waiving attorney-client privilege, be sure not to disclose the details of your situation except to lawyers and their assistants.

Avoid common pitfalls

Though it is okay to seek candidates through internet searches or the phone book, if these are the sole sources of your candidate pool, you risk hiring an attorney who is a good marketer but a sub-par lawyer. Do not hire an attorney simply because you have seen him or her in a television ad or on a billboard. You should also avoid hiring an attorney because he or she is your buddy. A personal friendship should actually be a strike against a candidate.

Invest time and thoughtful effort into your hiring process

In terms of hiring an attorney, this is the most important piece of advice I can share. When people are seeking an attorney, they typically want one now. However, as with any endeavor, the more thoughtful effort you put into it, the better your outcome will tend to be.

Because there is so much to consider in selecting legal counsel, a single article can cover only a few basic points. For a step-by-step guide to making an optimal hire, see my forthcoming book, [No Objection: How to Hire a Lawyer You Don't Hate](https://www.dustinsladelaw.com/no-objection-how-to-hire-a-lawyer) (<https://www.dustinsladelaw.com/no-objection-how-to-hire-a-lawyer>) .

This article is not intended as legal advice and should not be considered as such.