

Hiring Your First In-House Counsel

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When a company hires its first in-house attorney, an array of business practices are subjected to legal review for the first time. This can have the short-term (and even long-term) effect of increasing the legal expenses of a business. This is particularly true if the first hire is a general counsel rather than a staff attorney. So if legal expenses may actually climb, how should a company decide to add to its overhead?

Advantages of Bringing Counsel In-House

A key advantage of having an in-house GC is that he/she is "living with the client" during the initial thinking about projects. In a company where the GC is considered part of senior management, counsel is on hand to steer the company toward safer approaches to potentially risky propositions before significant time and resources have been committed. By virtue of having more direct and continuous contact with managers throughout the company, in-house counsel may identify and focus on issues that management might never have brought to the attention of outside counsel (or only when it was too late). In contrast, outside counsel are consulted most often after a matter has attained a "critical mass" and the expense becomes clearly justified.

Not every company can justify hiring a full-time or even part-time lawyer. There are no hard-and-fast rules, but here are some of the indicia:

1. Sales exceed \$10 million and/or the headcount of the company goes beyond 250.
2. The company provides a service or sells a product that has potential to cause great physical, emotional, or financial harm.
3. The company owns and/or leases several properties.
4. The company deals with a high volume of contracts with vendors and clients.
5. The company is in a regulated industry (or one that will be).
6. The business is heavily involved in the purchase, sale, and/or development of valuable intellectual property.
7. The company is contemplating going public.
8. The company is facing a serious legal/PR problem that is likely to linger.

Who is the First In-House Attorney?

Sometimes the first attorney to be hired by a company is not a GC, but rather a junior lawyer hired to function in a narrow capacity (e.g., reviewing contracts or overseeing regulatory compliance). Technology companies sometimes hire patent counsel first. Still other companies may make the decision to hire a GC on a permanent part-time basis.

If the company does decide to hire a GC, it is more sensible to hire a generalist

because the legal problems of most companies span a wide range of business, employment, real estate, tax, and litigation issues.

Prior in-house experience (or corporate experience that predates law school) demonstrates that the attorney is accustomed to working closely with managers and finding workable business solutions. Prior in-house experience also ensures that the attorney is familiar with the drop in professional status that some lawyers feel when they leave the revenue side and join the expense side. Finally, prior in-house experience indicates that the attorney has experience managing outside counsel and controlling legal bills.

Several years of experience at a major law firm can be a good indicator that the attorney is well trained. It is more difficult to get good training in a corporate law department because there are fewer attorneys to learn from and fewer resources for learning (though there are some very talented attorneys who have never worked at a major law firm). An attorney with firm experience also knows how duplication of work can occur in a firm and what level of expertise is necessary for an issue.

Ultimately, money is the issue. Companies hire attorneys as part of their risk-management strategies. A lawyer who is doing his/her job well will protect a company from liabilities that far exceed his/her salary (if he/she is in-house) or his fees (if he/she is hired as outside counsel). The question that each company must resolve is whether bringing some capacity in-house is cost-effective in the short run or, more importantly, in the long run.