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TOP LEGAL CHALLENGES  
FOR BUSINESS LEADERS



# TOP LEGAL CHALLENGES FOR BUSINESS LEADERS

In today's world, companies need experts to help them stay on top of the latest trends.

**J**ust like their mothers always said, lawyers are really like doctors. The best don't simply treat problems; they prevent them from ever happening. And increasingly, that's a skill that clients—from small startup companies to global conglomerates—require. It's not just because emerging technologies have brought the world closer and made its markets more competitive. It's because of emerging attitudes, too: shareholders who are taking a closer look at how businesses operate, legislatures that are reconsidering the way they protect rights and enforce obligations, and a public that's keeping a sharper eye on the companies around them.

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Emerging, too, is a sea change in four legal areas of particular importance to modern businesses. What follows is a look at the key trends, and best practices, that companies need to know about if they're going to stay ahead of the storm, and the competition.

## 1 AVOIDING JUDGMENT DAY

One of the most important aspects of litigation takes place long before the actual trial: the discovery process, where each party can ask the other for documents pertaining to the case. Not long ago, this meant a lot of paperwork had to be dug up and handed over. Now it also means a staggering amount of electronic data: everything from emails to voice-mails to records stored on servers across the globe. Figuring out what needs to be turned over—then finding it, extracting it, and reviewing it for relevancy and privilege—is a task that keeps many an in-house lawyer up at night. Little wonder: Discovery done improperly doesn't just imperil a case; it can rain sanctions down on the company.

Partnering with the right law firm can help manage the e-discovery process, keeping it on track and budget. It also forces companies to be proactive. “Most organizations don't deal with problems until they've had a calamity, and that's a mistake,” says Wayne Matus, a partner at Pillsbury Winthrop Shaw Pittman and co-head of the firm's e-discovery team. “They need to start at the beginning, by creating a records retention policy, so they better understand which documents they keep and where they keep them. We'll help them with that.” And when a lawsuit does arise, a seasoned e-discovery firm can vet and choose the best outside vendors for the job. “A financial services client, for example, will want a vendor with a high level of security,” says Matus. “In another case, it may make more sense to have overseas contract lawyers—who cost about half the price of domestic resources—to do the document review. We're like a general contractor, finding the right vendor and getting the client a quality service at a fair price.”

## 2 PROTECTING INTELLECTUAL ASSETS

Forget all the talk about Congress mulling patent reform. While legislators debate the issue yet again, the courts and the U.S. Patent and Trademark Office (PTO) have already taken steps that make patents harder to acquire and easier to lose. “The pendulum swings back and forth over the decades,” says John Kilyk, managing partner at the intellectual property law firm Leydig, Voit & Mayer. In the late '80s and early '90s, when everyone—including the PTO—was enamored with new technology, standards were relatively relaxed and getting a patent approved was less than a Herculean feat. Today there's a backlash—particularly from a software industry that's constantly finding itself sued by patent holders contending that their technology covers some aspect of a product. “People are saying we've gone too far,” says Kilyk. “In some measure, they're responsible for these changes going through the system.”

Already, those changes are having an impact on companies seeking patent protection. “We're seeing a notable difference now,” says Kilyk. “The PTO doesn't miss an opportunity to reject a case.” That means applicants need to deploy more legal muscle to counter each rejection and get their patents through. And they may need to fight harder to keep them, given recent court decisions, including a 2007 case in which the Supreme Court made it easier for patents to be invalidated on grounds of obviousness.

Eventually, Congress, too, will weigh in—and lawyers expect more changes, including a switch to a first-to-file system, where patents are awarded to the first to get in an application, not the first to invent. “It will create uniformity with the rest of the world,” says Steven Rocci, a partner at the IP firm Woodcock Washburn. “It also creates efficiency, encouraging people to file early.” And, of course, to stay on top of things.

### 3 THE C-SUITE IN THE SPOTLIGHT

If there is one word that highlights the corporate environment today, it's scrutiny. In the wake of accounting scandals like WorldCom and legislation like Sarbanes-Oxley, companies need to be more open in the way they do business—or risk the wrath of shareholders, customers, and regulators.

One area that's seeing particularly increased scrutiny is executive compensation. “The SEC's disclosure rules on executive compensation have been revised and made more stringent,” says Russell Gertmenian, presiding partner at Vorys, Sater, Seymour and Pease.

“They're attempting to give investors a better understanding of what executives are getting paid and what they are getting paid for.” As a result, companies need to provide explicit information not only about the value of perks but about performance targets that trigger bonuses. “You have to tell shareholders what those targets are, so they can determine if they're truly challenging,” says Gertmenian. “Companies absolutely need to provide compensation information in a transparent way.”

Another emerging best practice is compensation committees hiring their own outside lawyers. “It's become a pretty hot thing in the last two to three years,” says Gertmenian. “It gives them protection that they acted in conformity with counsel unrelated to the company. If they got the same advice from the regular outside counsel, questions might be raised about their independence.”

“...if employers don't put their house in order there are a lot of plaintiff's lawyers willing to help.”

### 4 FAIR LABOR PRACTICES

Of course, the scrutiny doesn't end with compensation. Increasingly, it's being aimed at human resources as well. “In the last three to five years, there has been a heavy emphasis on wage and hour compliance-related issues,” says Marko Mrkonich, a President & Managing Director at the labor and employment law firm Littler Mendelson. “The Fair Labor Standards Act—Depression-era legislation that many had thought had gone to sleep—has awakened with a vengeance, and if employers don't put their house in order there are a lot of plaintiff's lawyers willing to help. We're seeing eight-digit settlements and verdicts.”

It's far less expensive to avoid the lawsuits in the first place. That means making sure that job descriptions accurately reflect what employees are doing, that those already in jobs are properly classified, and that payroll practices conform to legal requirements. “It's easy to decide that you want to do things right, but harder to actually do and maintain it,” says Mrkonich. “It takes a commitment that starts at the top and is driven through the organization to provide a safe and appropriate workplace.” It also takes a partnership: Working with a law firm that can help prepare and implement the right employment policies. A go-to law firm doesn't just work for you. It works with you.

Companies need to be more open in the way they do business—or risk the wrath of shareholders, customers, and regulators.

#### Littler Mendelson was named a "Go-To Law Firm" by the following companies:

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**Named in Litigation:** *Arthur J. Gallagher & Co., AutoZone, Inc., Family Dollar Stores Inc., FedEx Corporation, Harrah's Entertainment, Inc., Hewlett-Packard Co., Lowe's Companies Inc., Shaw Group, Walgreen Co.*

# THE GO-TO LAW FIRMS OF THE WORLD'S LEADING COMPANIES



**Which law firms** do the world's leading companies turn to first to handle their most significant legal matters? ALM, the nation's leading legal journalism company, surveyed each company's general counsel. That information along with research in key databases such as ALM Research Online, Litigation Monitor™, LIVEDGAR®, Westlaw®, and others form the basis for each firm's selection as a Go-To Law Firm.

The surveys and research identified each company's primary outside law firms in each of nine practice areas: banking and finance, corporate transactions/mergers and acquisitions, intellectual property, labor and employment, litigation, regulatory affairs and compliance, securities, Canadian and international matters.

No law firm can pay to be named. Each firm featured in these pages is here because it was named as a Go-To Law Firm.

Choosing outside counsel is an important decision. Use this as a resource to enhance your selection process, benchmark current and prospective outside counsel, and better understand a firm's particular practice expertise.

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## About Littler Mendelson

With more than 700 attorneys and 45 offices in major metropolitan areas nationwide, Littler Mendelson is the largest law firm in the United States devoted exclusively to representing management in employment, employee benefits, immigration and labor law matters. The firm's client base ranges from Fortune 500 companies to small-business owners. Established in 1942, the firm has litigated, mediated and negotiated some of the most influential cases and labor contracts in the nation's history. For more information, visit [www.littler.com](http://www.littler.com).

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