

Business Owner's Guide to Lawsuit Readiness

Sarah Sawyer: Welcome to you this week's OK at Work with myself, Sarah Sawyer, my colleague Russell Berger, both attorneys at Offit Kurman, and today we are talking about what happens when you get served with a complaint or a lawsuit, what do you do? So that can be a very intimidating moment for a lot of folks, especially if you haven't been involved in litigation before. And also depending on what the nature of that litigation is, how personal it is, how upsetting the things might be in the complaint that you received. You might look at it and say, oh, this is not true. What is this? What's happening? It can be a really confusing time.

And a little bit intimidating. So what should people do when they, if that happens to them, I should say not when, 'cause hopefully not everyone will go through a lawsuit in their life. But what's the first thing people should do, Russell?

Russell Berger: Yeah. Well, to that point, I mean, if you're running a business, stands the reason it's gonna happen [00:01:00] at some point.

Again, hopefully not to you. We do a lot of proactive work to try to prevent that and reduce that risk. I think that is the first thing. You shouldn't be surprised that it's happened. It happens in business. You run into the wrong people. You have an employee that's frustrated with you, whatever, someone doesn't pay you and is proactively trying to avoid paying you, whatever it might be.

That stuff happens. And so that would be step number one is, just take a deep breath. This is normal. It's unpleasant. But it's within the realm of running a business. Much like taxes, right? That's unpleasant though. But you know to Expect it every year.

You don't know to expect a lawsuit, but it's normal in that way. And you wanna approach it calmly, rationally or have counselors that help you to approach it calmly and rationally and objectively. And with that I think there's, especially in today's world, there's this tendency to throw it in the chat GPT and see what it says.

And while, and with many things, leveraging AI is a great tool. When you start putting things into AI even if you have a private [00:02:00] account it's not privileged, right? So whatever that communication with the chat bot is could be discoverable. So you don't wanna do, if you want answers and you want some, like, Hey, I need a plan to go forward.

I'm stressed out. I need to know that this is gonna be okay, or at least this is gonna be manageable. Don't go to the nearest chat bot to get that. 'cause it can cause problems down the road in the litigation. And we're just starting to see that as, the litigation tactics evolve to this new reality.

But I do think, if you're a business, you're getting sued, you're gonna have to have a lawyer represent you in that. That's just how the rules work. So I do think it makes sense to get to your counsel right away and have that high level initial conversation where it's not about like necessarily every detail of the case.

It's what is this complaint about what's going on here? What are my options for moving forward?

Sarah Sawyer: Yeah. And I think it's good. The privilege concept is something that always you have to make sure you keep in mind. And also just remember that 'cause sometimes people get served with a complaint.

It's something embarrassing or something that's upsetting or [00:03:00] emotional or it's hard to talk to someone about and just remember that's another reason why talking to a lawyer is the right move because we have confidentiality, we have privilege. There's obviously some exceptions to that, but it's fairly broad.

And seeking counsel doing that promptly also, because timing considerations are always important here. Usually you have a certain time to respond. You need to respond in a certain way. And so you don't wanna miss the window, you don't wanna be late in responding. 'cause that just makes it harder for, whoever you do end up hiring to have to do an extra step.

So promptly deal with it, as we always say on here, be proactive. But a lawyer is the right person to get on the phone with then start talking to about these issues for sure.

Russell Berger: Yeah. Because, you mentioned it sometimes what's in a complaint will inflame the passions, right?

It'll get you good and angry now, you shouldn't respond from an angry place, and again, the complaint is like the other side's best possible case, right? It's the best facts that they can muster put in there to [00:04:00] make you look as bad as possible. You haven't told your story yet, you haven't figured out how to even play the cards that are your story yet.

In my view, and you don't wanna respond to that and agonize over this one-sided, incorrect version of events. You wanna get with capsule and figure out okay, well how do I, tactically, surgically, precisely attack this, which, you may think is nonsense or half truth or whatever.

How do I, attack this and get the result I want in this case, not, how do I fire back at this clown that came after me and have this rage towards.

Sarah Sawyer: Yeah. So yeah, definitely good advice and make sure you get on it and we'll see you next time, Russell.

Russell Berger: Thanks Sarah.

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