Preparing for Legal Costs for Your Business

Sarah Sawyer: Welcome to this week's OK at Work with myself, Sarah Sawyer, my colleague Russell Berger with attorneys at Offit Kurman. And today we are talking about managing legal costs and risk. We talk a lot about the risk part. Often, obviously on OK at Work, sometimes the costs. But yeah, as a business owner a lot of times a lot of legal things come up that are expected.

You've got a handbook review, you've got certain just day-to-day things, contract review or just different things that come with running the business. But then you have those higher budget items like litigation or conflict or challenges. And depending on what's going on in the world and in, the legal landscape, those costs might be more likely to occur, they might be higher than you might be anticipating in certain years. There's a cyclical nature and flow to this sometimes. Sometimes it's random. But I Think it's something that obviously business owners have on their mind that they need to [00:01:00] plan for as a cost that might happen.

But what are some things that, business owners should think about when it comes to legal costs, Russell, and planning for that?

Russell Berger: Yeah. Well, one, and you're alluding to this, is that, litigation's a lot harder thing to budget for and plan for than the fixed cost of associated with routine compliance, like updating your handbook every year. You ask your lawyer, how much is that gonna cost? You get a pretty good estimate and have a pretty small margin of variation there. Same thing with like employment agreements or, operating agreements. Any of the things that we've said over the years

on OK at Work, are things you should do up front, like they're easy to budget for and they're easy to plan for. Even when we're helping clients proactively, if we had a whole laundry list of these are the things on your legal to-do list, you could budget for 'em, you could space 'em out over time so that you have a steady burn rate as opposed to trying to do everything all at once.

Those are much easier things to manage than litigation costs. And that shouldn't stop you as a client if you find yourself in litigation from asking your lawyer, like, [00:02:00] what is this gonna cost? What kind of, burn rate am I looking at? Where are the big bumps gonna be, usually that happens around discovery. But where are these big, I need to plan for my cash flow. I need to have a sense of how much it's gonna cost for me to have this fight so I can make informed decisions about this fight. But it's much harder to nail that as precisely as you could some of these compliance things.

And frankly as you alluded to Sarah, litigation or, hot button conflict pre-suit those are big ticket items. Far bigger ticket than like getting the documents done.

Sarah Sawyer: Yeah and what happens with local and federal laws or with market forces can also impact, the likelihood that people might be picking more fights over things. We've seen that and talked about it, in various instances on OK at Work where it's like with the government shut down, for instance, where, certain vendors and folks may not be getting paid. And then that impacts people downstream and then there's more conflict.

So sometimes you can see these things coming and saying, all right, there's an uptick in employment lawsuits [00:03:00] because, there's a friendlier EEOC, environment or these types of things can shape what might be going on with your workforce or your contracts or your relationships, your business relationships.

And they might be indicators that you might need to be engaging more with legal in certain years or certain phases of your business and others. So. While it's a little bit unknown. It is something you can somewhat anticipate and plan for, and be thinking ahead to just when those things start to bubble up and happen.

And if you're suddenly starting to pay a lot of attention to legal and starting to see that risk maybe coming down, that's probably a good indicator to say I might need to be thinking about this when I'm budgeting for the year, for the next several years. Or, in your strategy, in your thought process.

Russell Berger: Yeah. Right. Well, 'cause if one of these things goes sideways and you get dinged on it and you have a big, legal bill plus whatever, to remedy the thing that went wrong, and you're spending a substantial amount of money on that, you're gonna add to that tab, well, I could have fixed this for [00:04:00] $5,000.

I'll spend the $5,000 and fix it so it doesn't happen again. And I think, one of our main points is, that $5,000 fix or the risk of not doing that relatively cost effective fix is gonna hit some people, like, some businesses are gonna be impacted by that.

And, you're playing the lottery there and so, it's a lot more cost effective to get to those things front. And again, to dive back into the litigation piece of it. There are things you can try to do within the litigation to cost control a little bit, but because of the nature of litigation, particularly if you're a defendant you don't necessarily have control over where it's filed, how it's filed whether there's a quick resolution or not.

All these things at a minimum are gonna take, some working with the other side. So best to be in front of this as much as you can. And then if you do find yourself in litigation, understand these things and understand that there's a high degree of variability even when you do have a budget, so that you're not entirely surprised by, when something goes sideways during the course of a [00:05:00] litigation.

Sarah Sawyer: Yeah always good to make sure you're staying on top of that. Well, thanks Russell. We'll see you next time.

Russell Berger: Thanks, Sarah.