DAVIS + GILBERT

Public Relations Law

Preparing for 2023: Top Ways to Protect Your Firm

It is often said that an ounce of prevention is worth a pound of cure. The team at Davis+Gilbert agrees and recommends that public relations and marketing communication firms focus on 12 key business-related actions to prepare for the year ahead. These actions include everything from employee and client contracts to responding to new employment laws to corporate governance issues. Firms that prepare now will greatly benefit in 2023.

Client Contracts and Marketing Law

1. Minimizing Bad Debts and Client Disputes

With a recession looming and pressures on client budgets, firms should revise client contracts to avoid collection problems and billing disputes. Contracts should not only encourage a dialogue with clients about the quality and cost of services provided, but also require clients to provide reasonably prompt written notice of any concerns about the quality or cost of the services. This can be important leverage for the firm to get paid.

2. Preparing for Crisis Communications

Clients have an increasing need for crisis communications services when a public misstep becomes a national conversation. Firms should ensure their standard client contracts appropriately address the potential need for crisis communication services. Firms may also want to have templates to protect attorney-client privilege for instances when they are being hired by legal counsel for their clients or by their clients to work in situations when a potential government investigation or litigation is foreseeable.

3. Understanding Legal and Regulatory Issues

Fundamental legal and regulatory issues continue to be important when engaging with new and trending technologies in digital and social media. Firms should work with legal counsel to provide basic training on legal and regulatory issues impacting the firm's core business, including intellectual property and rights clearances, endorsement disclosures and new privacy laws. Staff should also be familiar with client and vendor agreements to understand how to guard against unnecessary risks.

Labor and Employment

4. Complying with Salary Transparency Laws

Many states, including those in large markets such as New York and California, have passed salary transparency legislation that requires employers to include salary and other compensation information on job postings. Employers will need to review and update job postings and/or work with recruiters to ensure compliance with these laws, or risk penalty and enforcement actions.

5. Adapting Employment Policies to the Remote Work Environment

During the COVID-19 pandemic, many firms reduced or eliminated office space. Consequently, those firms now need to review where employees are located, whether those locations have additional legal requirements and whether changes to firm policies and/or agreements are required based upon the employees' locations.

6. Utilizing Independent Contractors

Over the past few years, a network of differing requirements and tests has developed throughout the United States to properly classify a worker as an independent contractor or an employee This year, the Department of Labor issued a new proposed rule that, if put into effect, will increase the likelihood that certain independent contractors should be treated as employees. Firms should review their contractor relationships and take steps to mitigate the risks (and penalties) of a potential finding that their contractors are misclassified.

7. Review and Update Restrictive Covenants

A growing number of states have stressed that covenants must be narrowly tailored to protect legitimate business objectives and confidential information. Courts have also shown that they will not rewrite an overboard covenant to render it enforceable. Firms should review and update their current restrictive covenants to ensure they are consistent with recent developments in the states in which they have employees.

Benefits and Compensation

8. Incentivizing Employees with LTIPs and Contract Equity

As reflected in the Public Relations Industry 2022 Survey Trends + Highlights, incentivizing and retaining talent continues to be a key concern. Properly designed long term incentive plans and contract equity arrangements are key ingredients to increasing revenue and profit and motivating employees – provided they are properly structured and comply with legal requirements.

9. Retaining Talent With Benefits Plans

The continued strong labor market means that employee benefits are another crucial element of employee retention, with employers paying particular attention to the affordability and access of their benefit plan options. Care needs to be taken when structuring these benefit plan designs to ensure that all legal requirements are satisfied, such as nondiscrimination and Affordable Care Act requirements.

10. Assessing Abortion Access

Abortion access in the wake of the Supreme Court's decision in *Dobbs* continues to be a key topic, with many firms reimbursing travel and lodging costs for employees to obtain abortion services. When structuring these reimbursement arrangements, firms should consult with counsel to avoid legal challenges. Recent actions by the Equal Employment Opportunity Commission, the federal agency with oversight in this area, suggest that limiting this travel reimbursement to abortion only could be discriminatory.

Corporate and Banking

11. Review of Governance Documents and Buy-Sell Agreements

As founders and equity holders of privately held firms begin long-term planning for retirement or ultimate liquidity events, it is important to dust off operating and shareholders agreements. They should work with legal and financial advisors to determine whether the contractual rights governing the disposition and transfer of their equity still align with their personal objectives and growth plan for their firms – and if those objectives have changed since the shareholder's agreement was first put in place. It's also never too early to start planning for "what's next."

12. Rising Corporate Borrowing Costs

To blunt rapid inflation, the Federal Reserve has increased its benchmark interest rate by 3.75 percentage points since March and further increases may be on the horizon. In response, commercial banks and private lenders tightened credit underwriting standards and increased corporate borrowing costs. Now is a great time for firms to reassess the economic terms and legal covenant packages contained in their existing credit facilities. This will help firms ensure continued access to sufficient capital and compliance with their respective contractual obligations in the face of economic headwinds.

For More Information

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