

Public Relations Law

Preparing for 2024: Top 12 Ways to Protect Your Firm

Leaders of public relations and marketing communications firms work at the intersection of many dynamic areas in order to make their firms thrive. How can firms prepare for the year ahead? Davis+Gilbert recommends a dozen key action items – ranging from topics as diverse as navigating the intricacies of client contracts, utilizing generative AI and updating corporate and buy-sell agreements.

Client Contracts and Marketing Law

1. Minimizing Bad Debts and Client Disputes

With 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. Consider Implications of Generative AI

The past year saw new developments in generative AI emerge at breakneck speed, and new advancements and applications of this technology will continue evolving at an unrelenting pace into 2024. Generative AI tools create a world of opportunities. They also introduce a host of pressing legal and practical risks, ranging from intellectual property and privacy concerns to shifting regulatory and legislative developments to questions of ethics and societal responsibility. Firms interested in utilizing generative AI tools should develop appropriate updates to client and vendor contracts and implement internal company guidelines and policies to make the most of the technology while minimizing risk.

3. **Revise Influencer Agreements and Policies**

Firms that rely on influencers to help spread their clients' campaign messages must remain mindful of the newly updated Federal Trade Commission Guides Concerning the Use of Testimonials and Endorsements in Advertising. The FTC Guides require individuals who are given anything of value in exchange for promoting a company's products or services, or an organization's messaging, to clearly and conspicuously disclose, in a "virtually unavoidable" manner, the fact that the individual has a material connection with the company or organization in question. The FTC is expected to ramp up enforcement in this area, focusing on companies and influencers that fail to adhere to these more stringent disclosure obligations, as well as companies that pay for positive consumer reviews.

Labor and Employment

4. **Review and Update Restrictive Covenants in Light of Hostile Regulatory Environment**

Firm should update their restrictive covenant due to several significant and recent developments: (1) the FTC's proposed rule banning non-competition agreements, (2) the National Labor Relations Board (NLRB) General Counsel's memo stating that non-compete agreements are unlawful because they don't allow employees to exercise their rights under the National Labor Relations Act and (3) proposed legislation banning non-competition agreements in New York and similar legislation and proposals in jurisdictions throughout the United States.

5. **Ensure Employees are Properly Classified for Overtime Purposes**

The U.S. Department of Labor proposed an increase to minimum exempt salaries. Similarly, at the state level, California's minimum wage will increase to \$16 per hour effective January 1, 2024, for employers of all sizes. This corresponds to a new California annual minimum exempt salary of \$66,560, also effective January 1, 2024. In addition, a New York City recently passed law will increase minimum wage to \$16 per hour in the City and surrounding areas effective January 1, 2024 (with additional increases to \$16.50 an hour and \$17 an hour in 2025 and 2026, respectively). The rest of New York state will also have increases on a slower scale, reaching \$16 per hour by 2026. This may soon be followed by a corresponding increase in the minimum exempt salary. Because of these developments, firms should review their employee compensation amounts and overtime classifications to ensure all employees are properly classified from an overtime perspective.

6. **Review DEI Programs and Initiatives Following Recent Supreme Court Decisions**

Recent decisions from the U.S. Supreme Court call into question the legality of diversity, equity and inclusion (DEI) and affirmative action programs for employers. In the aftermath of those decisions, newly filed lawsuits across the U.S. allege that DEI programs are unlawful because they consider race in employment decisions. As a result, firms should review their own DEI policies, announcements and initiatives to protect against future legal issues.

7. Accommodating Employees with Mental Health Issues

The number of employees who seek accommodations from their employers due to mental health issues is growing. As a result, the Equal Employment Opportunity Commission (EEOC) announced it will prioritize emerging issues, including qualification standards that discriminate against individuals with disabilities, pregnancy-related discrimination, discrimination stemming from global events and discrimination related to COVID-19's long-term effects, among others, in 2024 and beyond. Employers should ensure that they are following best practices in addressing disabilities and other medical concerns raised by their employees.

Benefits and Compensation

8. Incentivizing Employees with LTIPs and Contract Equity

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

Health benefits' costs continue to rise, causing employers to consider cost management techniques. However, 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.

Corporate and Banking

10. Review of Governance Documents and Buy-Sell Agreements

It's important to take a fresh look at the firm's operating and shareholders agreements since they were likely prepared at a different time in the firm's history. Founders should work with their 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 firm – whether that's a liquidity event, retirement or something else.

11. Reassess Corporate Borrowing Costs

To continue combatting persistent inflation, the Federal Reserve increased its benchmark interest rate to nearly 5.5% over the last two years. This has caused commercial banks and private lenders to continue to tighten credit underwriting standards and increase corporate borrowing costs. Now is a great time for firms to reassess the economic terms and financial 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 lingering economic headwinds.

12. Corporate Transparency Act Compliance

In 2024, firms with fewer than 20 employees and revenues less than \$5 million are set to become subject to reporting requirements under the new federal Corporate Transparency Act (CTA). These firms will be required to disclose detailed beneficial ownership information annually to the Financial Crimes Enforcement Network (FinCEN), a federal oversight authority. Firms should work with their legal and financial advisors to ensure annual compliance with the CTA when its reporting requirements take effect in early 2024.

For More Information

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