

How to Avoid Litigation in Uncertain Times

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The shredding of the Cole memo last month leaves the cannabis industry in an uncertain regulatory environment.

Industry-wide anxiety of this sort can sometimes breed business disputes that wind up in litigation.

Besides being expensive, defending a lawsuit from a business partner, investor, supplier, or employee can be a major distraction from your business goals.

If tensions are simmering in your company, maybe it's time to address any legal loose ends governing your business relationships. Virtually every lawsuit ever filed could have been avoided had the parties identified sources of conflict early and attempted to resolve their differences.

Here are some key questions to help identify whether legal issues may be bubbling beneath the surface of your cannabis business.

- **Do your business partners agree on the "deal" that is reflected in your company's formation documents?** Most small businesses are limited liability companies rather than partnerships, but the LLC agreement or other key contracts should accurately express who is doing what and how profits will be split. If those documents fail to reflect reality, that could become a source of friction and legal problems down the road.
- **If your business has investors, are they happy?** If you don't know, it may be time to communicate with your investors. Be candid and transparent about challenges your cannabis operation faces in these uncertain regulatory times. If your investors have relevant expertise, consider asking them for advice informally. People who are consulted and kept informed are less likely to hold a simmering grudge that could spark a pricey lawsuit. Managing your business includes managing expectations.
- **Do you have handshake deals with suppliers or vendors that should be documented?** Consider turning those handshake deals with vendors or suppliers into written agreements. In an uncertain business climate, the goal should be to bring predictability to uncertain business relationships. And if you already have written agreements, they should accurately reflect the reality of the deals you're doing.
- **Do you have a compliance plan to help you navigate regulatory pitfalls?** Because the cannabis industry is unlawful under federal law, it is imperative that cannabis operations comply strictly with state rules and procedures—even when times are tough. A lackadaisical approach to compliance could not only prompt state regulators to shut down your business, it could land you in hot water with federal drug enforcement agencies. Having a formal, written compliance plan can help. It demonstrates your company's commitment to the letter and spirit of the cannabis regulatory regime. If implemented and carried out

properly, a compliance plan can be an effective means of ensuring the people you work with are on the same page when it comes to navigating complex industry rules.

- **Are your employees anxious about the industry's future?** Make sure you promote a positive, safe, and professional work environment-one that scrupulously observes labor and employment laws, in addition to the cannabis rules.

There are many creative and inexpensive ways to resolve conflicts early before they become litigation. But most companies wait too long before calling in trusted counsel. They wait until a lawsuit is imminent or actually filed, when only expensive, time-consuming options remain.

Don't wait. Identify elephants in the room now. Resolve those simmering tensions, and tie down those legal loose ends.

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