



SIX WAYS TO AVOID COURT

“Ensure that any agreement is captured in writing.”

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By implementing a few common sense tips, not only can you lessen the risk of your business being sued or having to sue, but in the event litigation is unavoidable, you will be in a stronger position if the matter does go to court.

There are many compelling reasons why you would want to avoid litigation. It can be time consuming, distracting and expensive, sometimes costing more than the amount in dispute. Time spent preparing a matter for trial takes away time and money from your business. Disputes can also affect employee morale and damage your business reputation. It's stressful stuff.

1. Put it in writing

It's very easy for things to go awry when there is nothing documenting the agreement between the parties or variations to that agreement. That's why it's important to ensure that any agreement you have, whether with an employee, supplier, customer or business partner, is captured in writing and any variations to the original agreement are also documented, approved and signed off.

Having an agreement which clearly sets out what happens when a partnership or business relationship breaks down can minimise the cost of resolving a dispute. It can sometimes be too late to salvage a relationship and reach an amicable resolution once things have started to deteriorate. And clearly, it's no use having an agreement if it's poorly drafted or doesn't accurately reflect the terms agreed.

If the shoe's on the other foot and you are the customer, making a contemporaneous file note or documenting the agreement is still important. If they say to you over the phone: "I can provide it to you by X", confirm the arrangement by sending them a note or email.

Further, as a business you are in the best position to ensure that the agreement not only documents the arrangement reached, but it reflects the terms on which you want to do business. For example, you can choose specifically to include provisions which make mediation mandatory if there is a dispute.

2. Read the agreement

It sounds basic, but once you have an agreement, read it carefully and understand its day-to-day operation. Time and time again, we see examples where an accepted regime falls short of the provisions specified in the contract. Everything goes swimmingly until the parties fall into dispute.

3. Keep them in the loop

One of the best ways to avoid conflict and misunderstanding is to ensure your clients or customers know what's going on. This may include informing them about increases in costs, budgets and scheduling. Discontent can often arise when you fail to meet a cut-off date or attend to seemingly minor things like returning emails and calls promptly. Respecting your client or customer and keeping them well informed can go a long way towards avoiding litigation.

4. Act before it escalates

If you take steps to deal with a hiccup when it arises, you can often prevent it developing into a major problem and positions becoming entrenched. It's no use ignoring a glitch or complaint and hoping it will go away. It's best either to bring the matter to a head or to seek advice from a professional before you do so.

You should also ensure that your management team is effectively trained to identify and resolve disputes and are comfortable enough to raise them with you. Do you have systems which encourage employees to report potential risks?

5. Think about who you want to do business with

Ask your referral source or do an internet search and check out your potential clients or customers, employees and suppliers. Ask yourself whether they appear to be an individual or company you want to do business with. Are they the type of client you would want to work with, or the kind of person you would want to recruit?

If they appear to be embroiled in disputes, it's best to steer clear. Some organisations and individuals have a tendency to attract trouble. You likewise need to think about whether your own company fits the profile of the one that is always involved in disputes.

6. Put yourself in their shoes

Try to think objectively, put yourself into the other side's position and work out what is motivating the decision to litigate or refusal to negotiate. Is it simply personal animosity, or does the other party have a genuine reason for commencing litigation?

There may of course be instances where litigation is advisable or unavoidable, but if you follow these basic tips, you have a much better chance of resolving your dispute amicably or avoiding litigation altogether, a far better outcome than ending up in the courts. **mb**