

# When to Engage Outside Counsel: 7 Essential Questions for Legal Departments



Litigators and niche lawyers are invaluable partners to in-house counsel, but the decision to retain them must be rooted in strategy and cost-effectiveness. As extensions of your legal team, outside counsel is best leveraged for matters that require specialized experience and objective viewpoints or involve high stakes and heavy workloads.

As in-house counsel increasingly faces ballooning workloads and constrained budgets, ineffective use of your outside counsel budget can lead to wasted resources, misaligned priorities, and lost opportunities for in-house development. By evaluating each matter's complexity and urgency, you can determine when to handle tasks in-house and ensure your outside counsel uses its resources effectively.

Here are seven questions to ask before engaging outside counsel — and how to maximize the return on investment.

## 1 Is the matter in your wheelhouse?

It might sound obvious, but understanding and being realistic about your team's capabilities is essential. When a new matter lands on your desk, the first question to ask is: What legal issues does it involve? If the answer falls outside your or your team's usual focus and experience, that's one sign it's time to bring in outside counsel.

Complex litigation or specialized intellectual property matters are some examples that often require outside support from practitioners who live and breathe the subject matter. Routine contract reviews or employment issues are typically manageable in-house with existing resources.

Alternatively, perhaps the matter isn't something you handle regularly but the issues are straightforward. If so, can you apply your previous experience to the situation without much additional work? If the ask is simple, then handling it in-house may be feasible. But if the matter is complex, it might be time to consider outside counsel.



Consider the following when gauging whether a matter is in your team's domain:

- Does the matter require specialized knowledge or skills? If so, how do they align with your team's capabilities?
- Does the matter involve a niche or rapidly evolving area of law that could be challenging to keep up with?
- Is the matter intertwined with additional jurisdictions or cross-border considerations?
- Has your team encountered similar issues in the past? How were those handled, and what were the outcomes?
- How often do you or your team touch this legal issue? Is this an area of law that you frequently seek external guidance on?
- How well does the team work together on complex issues? Is there a good balance of skills and expertise to tackle the matter effectively?

If you decide to retain outside counsel, use the engagement as an opportunity to enhance your team's capabilities. A collaborative approach allows for knowledge transfer that can strengthen your department's skills in niche areas over time.



## 2 Do you have bandwidth?

No matter how capable you are of handling the matter, it's irrelevant if you don't have the capacity to take it on. Even the most highly qualified team can falter if they are stretched too thin. And if your company is like most – operating with one general counsel or a small (however mighty) team – you're in danger of juggling too many priorities, which will sacrifice the quality of your work.

This is especially important if the legal issue is complex or multifaceted, as it may require more time, technical knowledge, and strategic planning than your team can provide. Having too much on your plate is also a recipe for missing important details that could be costly or lead to negative outcomes in the future. (Nobody wants to be responsible for leaving a window open for a potential lawsuit or enforcement action.)

### Here's what to factor in:

- What existing projects and deadlines are you currently managing in the department? Would taking on this matter internally divert your team's attention from higher-priority or mission-critical tasks?
- Do you have enough time to address this without compromising other priorities?
- What's the urgency? Is there a tight deadline or demand for rapid results?
- If the matter is complex, would you need to invest time in training or research?
- Is your team frequently overloaded or spread thin?
- How well does the team handle unexpected surges in workload? Do you have adequate support systems, such as administrative assistance or technology, to help manage the surge?

## What's the worst that could happen?

Imagine a world where you handle the matter in-house, and everything that could go wrong does. What might that look like? Perhaps deadlines are missed, critical details slip through the cracks, compliance issues arise, and your team is overwhelmed. Rather than succumbing to an anxiety attack at this thought, treat it as a risk management exercise to assess what's actually at stake. Thinking through this scenario can help you decide whether it's worth bringing in outside support.

### Here's what to consider:

- What are your stakeholders' expectations regarding how this matter should be handled?
- Might a lack of internal capacity lead to mistakes that could have serious consequences?
- Are there complex or nuanced elements in this issue that might be overlooked without specialized focus?
- What would the financial impact be if something went wrong, such as fines, settlements, or reputation-related losses?
- Could the matter have a significant impact on your organization's reputation or place in the market if mishandled?
- Would potential missteps trigger compliance issues that might result in penalties or regulatory scrutiny?
- How might missteps affect trust with executives or other key stakeholders?

While some risks may seem manageable initially, the potential for fines or unexpected settlements could far outweigh the cost of hiring outside counsel. Considering these factors not only helps you weigh the financial implications but also highlights the importance of protecting your organization's reputation, compliance standing and stakeholder trust.

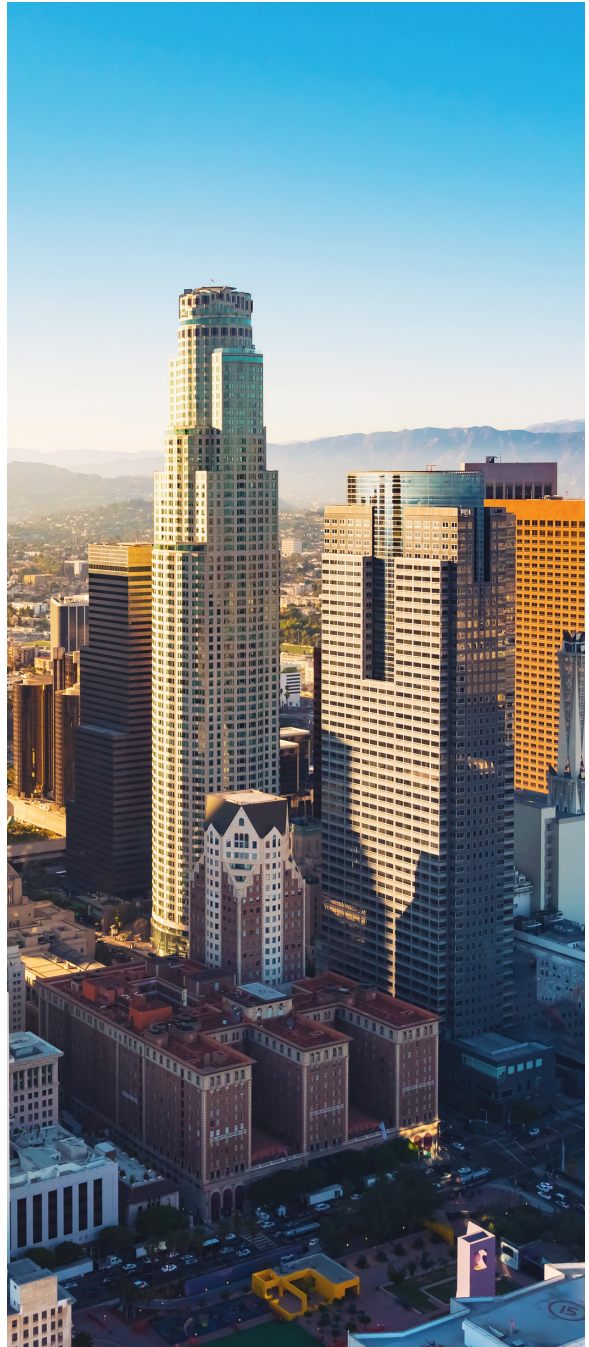


## 4 Does it make financial sense to keep the matter in-house?

Keeping a matter in-house often feels like the most economical choice, but taking on the responsibility without a clear understanding of its scope can lead to unexpected expenses and losses. Hidden costs can accumulate over the long term, including if valuable time is diverted from higher-priority tasks that generate revenue.

### Ask the following questions to determine whether handling the matter internally is a financially sound decision:

- What are the estimated costs of hiring outside counsel, and how does this compare to handling the matter internally?
- What resources, including time and personnel, will be required to handle this matter effectively?
- Could the matter distract the department from higher-priority projects that are more likely to generate revenue?
- Do you have the budget to absorb any unforeseen costs associated with this matter?
- How might the outcome of the matter affect the organization's financial standing in the long run?
- If you spend time and effort on this matter, what other projects or tasks would you be unable to pursue, and how might that impact the organization's bottom line or strategic goals?



## Do you have the necessary resources?

Without the right tools, even a capable team may struggle to meet the demands of complex legal issues. Databases, practice guides, checklists, industry reports and other resources can help you clarify your needs with an initial analysis — evaluating the matter’s size, risk, and intricacies — before engaging outside counsel. This lets you direct resources toward only the most essential aspects of the engagement, ensuring your investment goes to the right areas.

CEB was designed for California attorneys, with hyper-local analysis of [statutes](#), [court rules](#) and [case law](#) written and reviewed by practicing lawyers and judges. This allows you to keep the drafting of memos, contracts, and other documents in-house to make outside legal spending more predictable and position you to respond to urgent needs.

### Assess the quantity and quality of your team’s resources by considering the following factors:

- Do you have enough team members available with the requisite skills and knowledge?
- Does your team have access to legal technology, such as document management systems, practice guides and case management tools?
  - CEB’s [primary law database](#) reviews potential risks and compliance issues, and its [TrueCite®](#) citator flags any negative history, prior citations and relevant decisions.
- Are there specialized tools or resources that your team lacks but are necessary for navigating this specific legal issue?
  - OnLAW® Pro + Practitioner’s [practice guides](#) are curated by a carefully selected community of contributing judges and lawyers who frame, organize and monitor updates on legal issues. For example, if your matter concerns employment law compliance, CEB’s [wage-and-hour section](#) covers federal and state requirements and litigation tips, including Berman hearings, employee misclassification, exemptions, meal and rest periods, inaccurate wage statements, minimum wage, overtime pay and the Private Attorneys General Act.
- Are there support mechanisms in place, such as administrative assistance or external consultants, which can alleviate the workload?
  - Using [sample templates](#) and forms saves time by building upon ready-made, uniform documentation.
  - CEB’s [workflows](#) provide adaptable, step-by-step overviews of key legal tasks and various types of California state and federal matters.
- Does your team need additional training or professional development to effectively manage the legal issue?
  - CEB’s [webinars](#), [MCLE programs](#) and other [training materials](#) cover more than 25 practice areas, including employment, privacy, tax and bankruptcy law.
  - CEB’s [DailyNews](#) section is useful for staying informed on the latest updates across more than 30 practice areas, with takeaways and practical insights for attorneys.



## 7 Are you considering the right law firm?

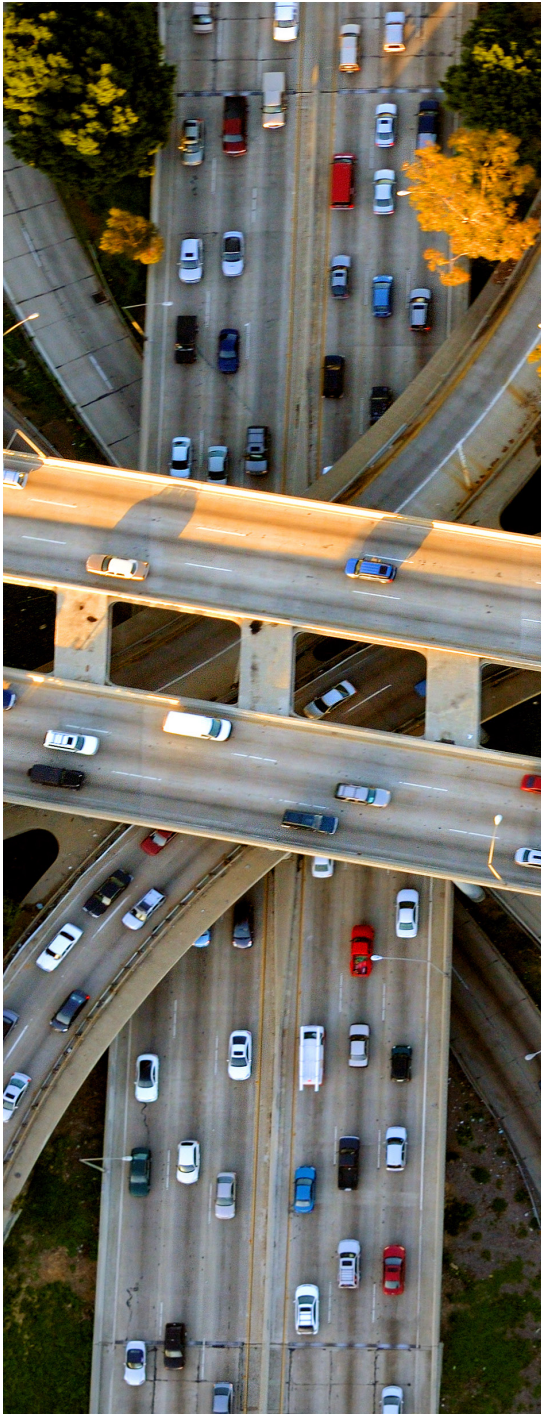
You don't have to rely on the same law firm for every type of issue – and, in fact, it is not advisable to do so. Different firms have different areas of expertise, and selecting one with experience tailored to your situation can make a significant difference. The firm that excelled in your recent IP case might not be the best choice for a putative employment class action. Carefully vetting firms to ensure they have the experience you need can save time, money, and unnecessary headaches.

### To guide your decision, consider the following questions:

- What is the firm's area of focus? Does it have a proven track record in handling similar matters to yours?
- Who will be working on your case? Are the attorneys assigned to your matter experienced and knowledgeable in the relevant area?
- What is the firm's reputation? What do other clients or industry professionals say about its services?
- What is the firm's approach to client communication? How often will you receive updates, and how accessible are the attorneys for questions or concerns?
- What are the fee structures and billing practices? Is the firm transparent about costs, and does its pricing model align with your budget?
- Does the firm use legal technology to create efficiencies and reduce costs for time-consuming work such as e-discovery or matter management?
- How does the firm handle conflicts of interest? Are there protocols in place to manage any potential conflicts?

## How will you evaluate ROI?

Developing a system for evaluating how you are allocating your resources will help you optimize your legal spending and spot inefficiencies – crucial for mitigating risk at your organization. Consider tracking the return on your investment for each matter and be alert for signs that your spending isn't yielding the desired results.



### Here are some common red flags to watch for:

- **Unexplained cost increases:** Are costs for routine legal tasks increasing over time without a clear explanation? This could indicate inefficiencies in how these matters are being handled.
- **Delayed response times:** Is your outside firm often slow to respond to questions or provide updates? This can hinder progress and suggest that they don't have adequate resources or commitment to your case.
- **Missed deadlines and other complications:** Is your outside firm consistently missing deadlines? This is a significant red flag, as it affects the outcome of your matters and demonstrates poor time management. Likewise, frequent surprises or unforeseen complications indicate a lack of thoroughness in initial assessments and planning.
- **Inconsistent quality:** Does the quality of work vary wildly? This could mean your chosen team doesn't have the right experience or resources to meet your needs. CEB's [practice guides](#) are useful for double-checking that nothing critical has been overlooked and assessing the scope of what you're asking outside counsel to do.
- **Ever-changing team:** Do you often encounter different attorneys working on your matters? This can disrupt continuity and create challenges in building a solid working relationship.
- **Lack of strategic alignment:** Does your outside legal team understand your business objectives and align its strategies accordingly? This can lead to missed opportunities and ineffective solutions.
- **Reactive approach:** Is your outside counsel primarily reactive rather than proactive in addressing legal issues? This suggests they aren't doing enough planning and risk assessment.





## Expense or investment?

Outside counsel is an invaluable and essential resource for in-house legal departments. In many situations, they are irreplaceable in terms of the focused subject matter expertise they offer. However, your department's resources are not unlimited, so it's imperative that you take a focused and strategic approach to outside legal spending.

How you allocate your outside counsel budget determines whether it becomes a recurring expense or a valuable long-term investment. And while it's important to bring in expertise where needed, you can't make informed decisions without maintaining a close understanding of your business and the nuances of each legal matter. Collaborating with outside counsel can also enhance your team's capabilities in an area over time, making future in-house handling more feasible.

Your answers to the above questions should not only be focused on controlling costs, but also help you strategically allocate your resources to get the most value out of your relationship with outside counsel.

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