
ACC DOCKET

INFORMED. INDISPENSABLE. IN-HOUSE.

Finding the Right Legal Resources in a Challenging Economy

Employment and Labor

Law Department Management

Skills and Professional Development



Billion Photos / Shutterstock.com

Cheat Sheet

- **The environment.** In-house counsel are up against a challenging economy, increased market pressures, and a growing list of risks to the enterprise.
- **Out with the old.** The traditional legal paradigm of “staff up or send out” is no longer adequate with budget constraints and the need for more agility.
- **An agile model.** Build a core team composed of in-house counsel who are supported by a bench of on-demand lawyers with needed expertise.
- **Benefits.** Legal departments have access to vetted lawyers. Don’t incur the costs of hiring full-time talent, and have more flexibility and buying power.

Anyone wondering whether their organization needs to hire a law firm knows the answer: Law firms will always have a place in the legal ecosystem for bet-the-company matters. But those matters are more rare than commonplace. And those law firms often come with hefty price tags and lack an operational understanding of clients. They very well might need a law firm on retainer and they might need one for exceptional matters.

But are law firms the only answer?

Given a disrupted global economy subject to inflation and recession, legal leaders must ask themselves if law firms are really the right resource to address the bulk of their legal work. Leaders should regroup and reassess where and on what their departmental budgets should best be spent.

A wealth of financing challenges

On the business side, commercial leaders are dealing with problems like sharp shareholder and regulatory scrutiny, a volatile economy, supply chain issues, and more — all of which threaten their efforts to maintain profit. In-house counsel are at the center of a tug of war between protecting their organization against escalating jeopardy and the need to support its fiscal goals. Legal's role has become more and more prominent, therefore, in navigating the corporate response to emerging risks and market opportunities.

Law departments can't just cut back – they've been getting busier and busier.

Law departments can't just cut back – they've been getting busier and busier. Post-COVID organizational change, evolving labor and employment norms, business and regulatory risks, and spiraling data volumes are just some of the everyday challenges.



eamesBot / Shutterstock.com

Nor can they just hire their way out of their workload: Not only are full-time employees a costly option,

but the [Great Resignation](#) has drained the talent pool to such an extent that firms are being drawn into expensive competitive wars in their attempts to attract and retain well-qualified attorneys.

Substantial budget cuts were anticipated by 88 percent of more than 2,000 GCs surveyed in a [2021 EY Law and Harvard Law School Center on the Legal Profession survey](#). And CEOs of companies with more than US\$20 billion in annual revenue were expected to mandate legal departments to reduce costs by 118 percent, despite the growing scale and scope of the legal department's activity.

... They need to deliver better departmental agility in the face of unknown risks while helping them scale their approaches to known legal obligations.

This leaves legal leaders with a shrinking set of options even while they need to deliver better departmental agility in the face of unknown risks while helping them scale their approaches to known legal obligations. The best option is for them to take a hard look at their resources — full-time employees, external law firms, and legal service providers — and map out how each can be optimally used to address their different requirements.

The two-handed approach

The traditional legal resourcing model balances the in-house team, handling an ongoing stream of enterprise legal work supporting the broader strategic priorities of the company, with law firms whose support is critical for large-scale litigation, bet-the-company matters like exceptional merger and acquisitions (M&A) activity, or for large-scale matters beyond the abilities and scale of the internal team.

This model is expensive and, therefore, less suited to the budget-strapped GC. The in-house team is a fixed cost so it's important to avoid staffing up if this will leave team members under-utilized for the greater part of the year. The ideal core team should follow the [Goldilocks paradigm](#) of being perfectly right-sized: big enough to focus on essential issues, while lean enough to control for costs and keep pricey specialists completely occupied. But is a lean core team adequate defense against a potential surge of workflow and matters?

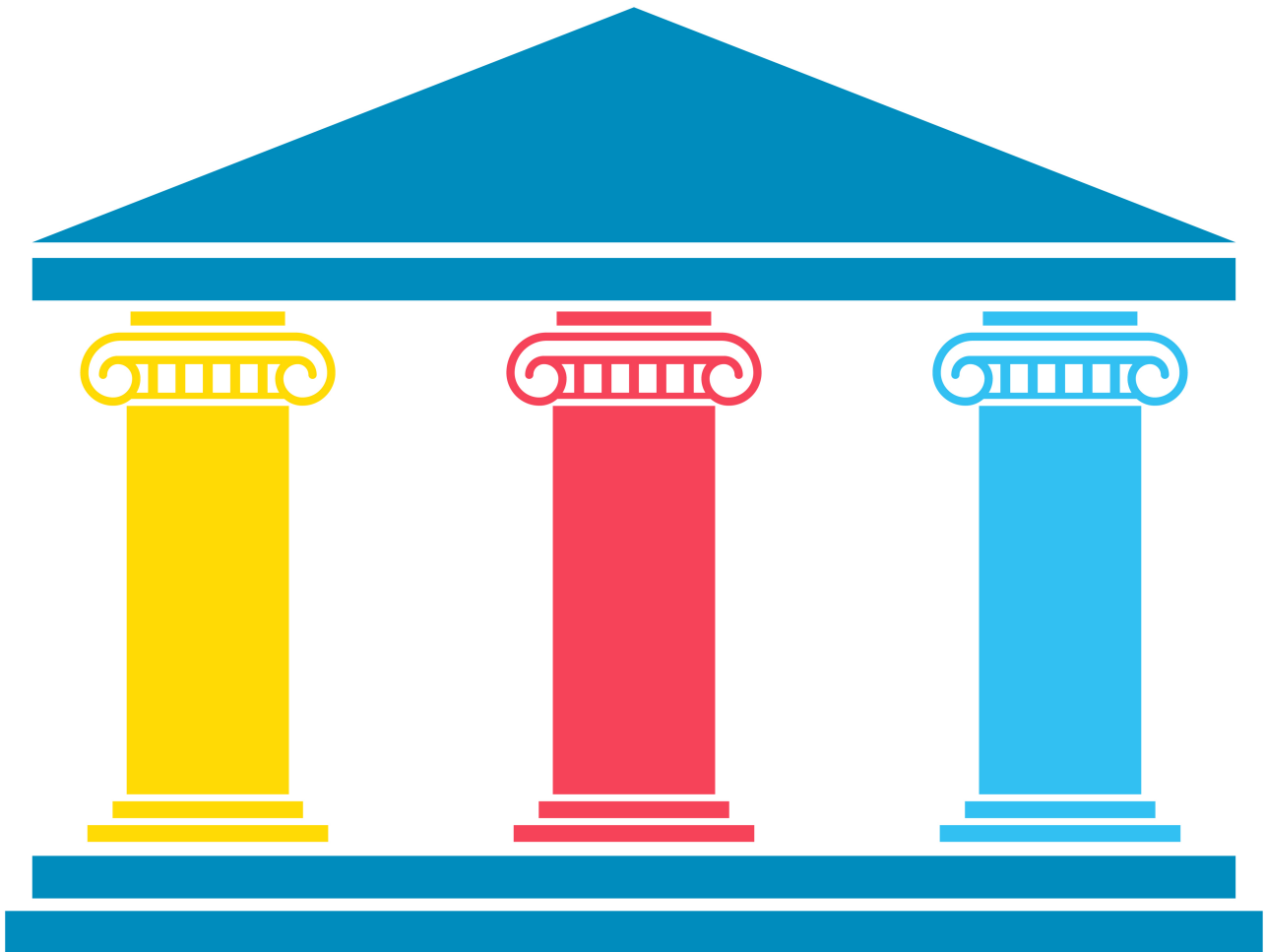
Large law firms in the United States are inherently expensive and getting more so. 2022 rate increases are projected to be between [5-10 percent](#). Additionally, law firms are inherently external, which means that they will need education about the legal matters for which they are engaged, adding another layer of managerial burden to bring them up to speed.

The agile approach: Three pillars

Rather than confining their thinking to the “either/or” of in-house or law firm, GCs now have another option. In this [Core-Bench-Firm \(CBF\)](#) model, developed by the author's company, the GC leverages trusted legal service providers to build a virtual bench of “always-on,” flexible talent that combines elite legal expertise with knowledge of in-house issues and trigger points, yet can be used on a completely ad hoc basis.

This “missing link,” the third layer of the legal function, offers a bridge between the internal and external options, providing a layer of flexibility for unexpected matters as well as a level of internal organizational understanding that allows for immediate action. It sits between the in-house team and

the law firm, supporting the core internal team with a bench of trusted, on-demand lawyers whose expertise can be drawn on to deal with emerging risks, workload surges, and even law firm management, without incurring the costs of outside counsel or full-time hires.



Dzm1try / Shutterstock.com

This flexible talent improves risk mitigation by matching legal matters to the right legal talent on an as-needed basis when, for example, the workload balloons suddenly or there's a time crunch. It extends in-house expertise and availability, thereby limiting what needs to be sent to a law firm and when. It decreases costs by minimizing law firm spend and it reduces the burden on in-house counsel by providing practical, business-focused oversight to teams who are managing multiple law firms.

The CBF model allows enterprises to reduce law firm engagements to exceptional, high stakes events. It also provides a buffer that enables GCs to determine the optimal moment, during the

course of a legal matter, to call on external firms for counsel, or to invest in a full-time hire.

Budget beater

The agility model doesn't just control costs; it provides the legal department with better value for every budgeted dollar.

This is not to undermine the value of internal teams or external counsel. This model embraces the unique capabilities of outside counsel while enabling organizations to engage with them on a more strategic scale.

While many GCs are hiring firms for overflow work or bringing on full-time lawyers to handle emerging specialty needs, GCs aiming to fight budgetary limitations on their department need to know that they have options. The right legal resource, when cost mitigation is paramount, is often agile legal talent.

Building the agile layer: Key steps

Developing an agile approach takes some preparation. The flexible bench of on-demand legal expertise must be curated, built, and onboarded before specific needs arise. Its nature will be dictated by factors such as subject matter expertise or specific anticipated risks. The goal for the GC is to build a standby team with a base of institutional knowledge that's ready to ramp up at any time as work requires or unexpected risks emerge.

The goal for the GC is to build a standby team with a base of institutional knowledge that's ready to ramp up at any time as work requires or unexpected risks emerge.

These are the key steps towards creating a virtual bench:

- Identify and understand the enterprise's key priorities, aligning the legal department's resourcing strategies with core business goals.
- Partner with HR, analyze any departmental talent gaps and assess likely needs.
- Look for areas to free up budget to start building the bench — as a start, freeze full time hiring for a period.
- Build the bench in stages:
 - Identify the skill sets that will be required;
 - Select a reputable legal talent provider to curate the selection of appropriate lawyers and to document institutional information to ease onboarding; and
 - Plan for continuing the expansion of the bench over time.

The benefits of establishing this flexible layer of talent go far beyond financial. This access to on-demand expertise talent can be used in many ways: to help create better legal outcomes in coordination with law firms, help support the entire lifecycle of an M&A deal from due diligence to integration, or to handle discrete components of transaction activity (such as contract review and integration). Meanwhile, the law firm addresses business-critical initial public offering (IPO)-related filings while the core team focuses on deal execution.

This three-pillar CBF legal resource model provides GCs with flexibility to manage costs and adjust to

inflation-driven budget changes, while arming them with an additional set of lawyers who know their organization. In short, the agile bench performs that much-needed role: adding value to both internal and external teams while keeping costs contained.

[Get more: Join ACC.](#)

[Catherine Kemnitz](#)



CLO

Axiom

As CLO at Axiom, Catherine Kemnitz is an executive vice president leading the global legal and compliance, corporate development, and corporate secretary functions. Throughout her eight-year tenure at Axiom in senior US and international roles, Kemnitz has brought her extensive legal experience across a range of strategic, corporate development, and operations roles. She is known for her strengths in driving strategic growth and high stakes transformation.

Throughout her 22-year career, Kemnitz has carved a reputation for successfully delivering innovative operational change strategies in tandem with meeting performance targets and managing risk. She has a particular focus on cross-functional collaboration, team leadership, diversity, equity, and inclusion, talent retention, and development.