

Managing Risk with Law Department Technology

Regardless of their short-term goals, managing its company's risk is the main function of every corporate law department. While general counsel are often working to improve efficiency and reduce costs, avoiding exposure where possible—and limiting it where not—is the reason law departments reason for being.

Over the years, a lot has been made about technology and its ability to help corporate law departments increase efficiency and reduce costs. But as Thom Jackson, vice president and corporate counsel at Prudential Financial puts it, "Risk and control are what matter most to our stakeholders. It makes little sense to be efficient without being effective."

In fact, a good integrated matter management—such as Lawtrac—not only enhances efficiency but can serve the higher purpose of helping to mitigate and manage risk throughout the legal department and the enterprise.

Define risk

How to define risk is the classic "legal vs. business" analysis. To typical attorneys, risk is usually something to be avoided at all costs. But to businesspeople, risk is simply a factor to account for in proper decision making. Many companies have made a fortune by agreeing to take risks their competitors won't.

In companies with well-managed law departments, in-house counsel partner with businesspeople to analyze and quantify risk, helping the businesspeople to see and understand risks that they otherwise might not. For example, a trained attorney might realize that a "partnership agreement" might trigger an antitrust inquiry, and help the businessperson understand whether the potential benefit is worth the risk. If the attorney and businessperson agree that the risk is worthwhile, the attorney can, at least, attempt to redraft the document to limit the exposure as much as possible. In fact, while good in-house attorneys have learned that some risk is tolerable, it is always their mission to avoid unnecessary risks at all times. And this is where a matter management system can help most.

Document Risk

Even a quick look at the corporate landscape over the past few years shows that documents pose risk. Enron and Andersen were brought down by mishandling of documents. Much of Sarbanes-Oxley revolves around records management. Morgan Stanley was on the wrong side of a \$1.58 billion directed judgment because of mishandling documents. Many companies are up in arms over the

brand-new Federal Rules of Civil Procedure because they do not have good records management programs or electronic discovery plans.

One place where companies frequently do not have control of their documents is in the legal department itself. Paper legal files are frequently mismarked, and too frequently not returned to a file room. A company's records management system must be easy to use, easy to understand, easy to maintain, and provide easy access, both physically and digitally," says Bryan Schmidt, records management consultant for Peabody Energy Corp.

Peabody developed a file room system using Lawtrac. First, they developed a standard naming system for legal files, with matter codes based upon the type of file (e.g. "CNT" for contracts or "LIT" for litigation.) This allowed for improved organization in the file room and for electronic versions of the files within Lawtrac to match. All files were labeled with barcodes for easy tracking. Governance materials, such as corporate minute books, were digitized.

Not only does good records management breed efficiency, but Peabody's employees never look bad because they can't find a file. They are at much lower risk of blowing a deadline, using an obsolete version, or losing data altogether, which is tremendously important, especially in a regulated industry like energy.

Find Risk

Much of the work done by every in-house counsel is helping their clients understand the various legal risks behind every activity. But exceptional attorneys actively search for places where they can minimize risk or avoid it altogether.

Much of this information can be found in the e-billing and matter management data available in a law department management application such as Lawtrac. "By studying our reports, we were able to get a better handle on our exposure," said Kim Townsan, senior manager, administration for UTC Corporation's legal department. "For example, we now better understand the ultimate financial impact of legal claims in each of our major business units." With this data, legal departments like UTC can leverage their increased understanding into better decisions, often preventing problems by changing policy or increasing training in a certain area.

For example, data provided by Lawtrac may alert an attorney that the number of matters in a particular area has been trending upward. With some investigation, the attorney may be able to understand why, and take some preventative law measures—such as new policies or training—to reverse the trend and limit long-term exposure.

Increase Efficiency; Save Money; Reduce Risk

A law department is bound to underperform if its attorneys spend too much time on non-legal tasks, such as invoice review. Because (paper) law firm invoices are so long and complicated, attorneys frequently spend substantial valuable time simply reviewing invoices for approval. Every minute spent on such pedantic tasks is a minute spent not keeping the company out of trouble. An electronic billing solution will automatically review the company's legal invoices—and compare it to its outside counsel guidelines—providing a simple exception report for quick attorney review and allowing the attorney to get back to legal work.

In addition, because an electronic billing program does a much more thorough review of legal invoices than humans could functionally perform, most companies find their legal spend goes down sometimes as much as 15%. “Paper invoices can really only be evaluated on a summary level, electronic billing provides much more sophisticated reports” said Peggy Vickery, office administrator of Harris Corp. “We have a firmer grasp of our activities and can build more accurate budgets so we can better predict how our spend will change.”

Additionally, improved financial information facilitates better decision-making about which law firms to use. For example, with good information a law department may learn that Law Firm A charges less than Law Firm B for a similar matter, despite a higher hourly rate, redeploying the saved resources to new areas based on their risk portfolio.

Get More from Your Law Firms

A key result of law department technology is data about the law department's various law firms. A good system will provide information that compares firms in many ways. Not only can users better understand the effective cost of using various firms, but they can also get winning percentages, settlement data, cycle time and other information, all easily sliced and diced by firm. The law department is able to choose the overall best firm for each matter; the result is better legal work for all.

Finally, good technology fosters better relationships with firms. Transparency facilitates better communication and collaboration between in-house and outside counsel, with each side more easily providing its specific expertise. The result is a more effective and well-oiled legal team all doing their part to manage and reduce overall risk.

Conclusion

Technology is usually evaluated on its ability to increase efficiency. And since their inception, most matter management systems have been marketed this way—highlighting how much more the law department can do with new tools. However, good law department technology also allows lawyers to do more and better work, understand business and legal trends, and collaborate more effectively with outside counsel, increasing not only efficiency but effectiveness. The result serves any law department's main objective: reduced risk throughout the organization.