



What To Do If Your Business Gets Sued: *A litigation primer for the litigation wary*

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Whether you are a small business or a large financial institution, the threat of a civil lawsuit being filed is always a possibility and becoming another regular cost of doing business. Although lawsuits are filed for any number of reasons, they share common traits that require a defendant to pay close attention to deadlines and take quick responsive action to be sure that important rights are not lost.

First, every business should know that powerful defenses are developed before the threat of a lawsuit ever occurs. For example, businesses should regularly update and maintain employment manuals, employment contracts, incorporation and annual minutes and other corporate documents. Depending on the nature of the lawsuit, these documents will almost certainly be requested by the other party and, therefore, should be readily available and up to date. Business owners and executives should work with their attorney before a lawsuit is even threatened to make sure important documents, procedures and policies are clearly written and followed by employees.

Although prevention is important, legal problems arise even for the most responsible and proactive business. After being served with a Complaint, very strict deadlines apply to your response to the lawsuit and, if missed, can cause the plaintiff to win the case before your side is even heard by a judge. Also, if the matter is addressed promptly, more options will be available to challenge certain aspects of the Complaint or the venue where it was filed.

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Perhaps this sounds self-serving (since an attorney wrote this article) – but **speak to an attorney at once!** In addition to helping you understand deadlines (and possibly negotiate the extension of a deadline), your attorney will begin discussing what defenses may exist and help to develop a strategy for the case. Too often businesses delay discussing matters with counsel, engaging in their own internal dialogue to better understand the factual underpinnings of the allegations, and miss important deadlines which could later frustrate their defense.

You should refrain from speaking about the Complaint or the facts related to it with **any** outside sources, other than your attorney, to prevent the possibility that you will (unknowingly) waive certain privileges related to communications. Equally important is to refrain from discussing the matter with the plaintiff. Although this may seem obvious, many companies engage in discussions with opposing parties in an attempt to resolve the matter and may unintentionally create ammunition for their opponent. These communications could give rise to additional claims or support the current claim. Other post-Complaint conversations with outside parties should also be avoided because those involved may be forced to later disclose those conversations. Moreover, if any potentially confidential communications were simultaneously shared with a third person, the entire conversation (or document, in the case of an email) may lose its confidentiality. Therefore, be careful to whom you direct emails or documents which are related to the lawsuit.

Create a list of individuals that may have information about the incident leading up to the Complaint. This practice will facilitate the information gathering process and help impart knowledge to your attorney and others helping to defend your case. A designated person within the company, or even your attorney, should contact each of these key people to request a written account of their understanding of the facts. This is important early in the process because the litigation process can take many months, and even years to complete, causing memories to fade if the proper people are not questioned early in the lawsuit.

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Finally, if your company is sued, or even threatened with a lawsuit by way of a demand letter, you should take immediate proactive efforts to preserve documents and electronic materials, such as emails. It is very important to suspend regularly scheduled deletions or manual deletions of emails and tangible documents until after the litigation has been resolved. Without careful attention to preventing information from being deleted, you can create accusations of evidence spoliation, a costly process to defend which can result in sanctions or, in severe circumstances, a judgment for the plaintiff.

Businesses should keep these simple concepts in mind so they can be organized, prepared and not accidentally prejudice the defense of their case. [Shumaker Williams, P.C.](#) welcomes calls from current and prospective clients as early in the litigation process as possible to confidentially discuss what options are available. Please call [Evan C. Pappas](#), Esquire, or [Kenneth J. McDermott](#), Esquire, at 717-763-1121 or [Harry Levy](#), Esquire, at 410-825-5223 for more information or to schedule a confidential consultation.

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