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5 TIPS FOR PROTECTING YOUR COMPANY'S BRAND-RELATED IP FROM UNFAIR COMPETITION

1. Choose your brand carefully. As in many contexts, the vital first step is exercising some careful forethought—here, regarding choosing your company's branding. Make sure your intended company name is not one being used by others. You do not want to start building brand equity that will flow to some other rightful owner of the branding name. Avoid using a name for your brand that incorporates overly generic words or phrases, because using generic words will lead to a brand that simply will not be protectible to nearly the same extent. Work with counsel to conduct a trademark search to ensure that your intended brand is not confusingly similar to another company's. If it is, this may shut down your ability to build brand equity before you ever start.



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valuable intellectual property. For example, a company should use Terms and Conditions language in your product-sale invoices that maintain your company's exclusive rights to use its IP, as well as using narrowly tailored non-disclosure agreements with your vendors that adequately maintain protection for your company's trademarks, trade secrets and other intellectual property.

4. Diligently monitor your brand and trademarks. Brand protection requires a company to actively monitor its brand, whether manually or through a number of options that can be implemented to automate the process. The internet marketplace, in particular, can be the wild west, and a knock-off company could have already moved on and closed its doors if you wait years to address it wrongly infringing your IP, making money off your brand and likely harming your company's reputation in the process.

5. Actively address any improper and infringing use of your company's brand. It is essential to remain protective of your brand to avoid any argument that your company has waived its rights. This is especially true when a competitor is not using your exact branding but are using branding that is confusingly similar to yours—in an effort to ride the coattails of your company's years of effort to build brand equity. Thus, as soon as you become aware of a competitor using your branding in a questionable way, you should address it with a cease-and-desist letter to put the offender on notice, followed by further legal action if needed. ■

2. Consult with an IP lawyer and take steps to protect your brand and IP. Work with legal counsel to prepare an application with the U.S. Patent and Trademark Office for registered trademarks on your brand and logos. This step will allow you to use the registered trademark symbol in conjunction with your company's branding assets. Importantly, the registration will establish a presumption of your ownership of the assets and will put any would-be infringers of your trademarks on notice that they may not use your brand. As a result, registration can significantly improve your company's position if litigation is needed to address a competitor misusing and harming your brand.

3. Use necessary agreements with your vendors and customers. Agreements should be carefully used as a part of your company's overall strategy to protect its

A NEW NORMAL: SURVEY OF LOCAL AND NATIONAL EMPLOYERS

Since the start of the pandemic, workplace regulations and employee expectations have evolved rapidly. In May 2022, Littler Mendelson published its Annual Employer Survey Report analyzing information collected from 1,275 in-house attorneys, C-suite executives and human resources workers on a range of complex employment law issues – from vaccine mandates and return-to-work policies to employee retention, workplace diversity and artificial intelligence.

Employers are split on mandating vaccinations. 41% of employers surveyed reported having implemented a mandatory vaccination or regular testing requirement, many in response to legal requirements. With the U.S. Supreme Court stay on implementation of OSHA's Emergency Temporary Standard, mandatory policies have slowed. 56% of survey participants reported they do not plan to have mandatory policies unless required by law.

With paid sick and family leave reported as one of the top regulatory issues expected to continue to impact workplaces, over two-thirds of survey respondents reported making changes to leave policies. The majority reported that these changes respond to state-specific requirements, while other employers – including Columbus employers, where there is not a paid leave law for private employers – have made changes to stay competitive, retain diverse talent or reduce risks of employees coming to work sick.

While laws regarding vaccine mandates and paid sick leave continue to develop, employees have been returning to the workplace in varying stages. 54% of survey respondents reported having return-to-office policies. However, to attract and retain talent, nearly all respondents (97%) reported offering schedule flexibility and remote work options. Despite a broader acceptance of flexibility, maintaining company



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culture and employee engagement is an ongoing concern, as noted by 86% of respondents.

Recognizing the pandemic's impact on women and diverse employees, and in the wake of 2020's powerful movement for social justice and racial equity, employers are also giving diversity, equity and inclusion goals laser focus. 57% of respondents reported revising recruiting, hiring, and retention practices to improve DEI efforts and nearly one-third of respondents have developed more clearly defined benchmarks or metrics. In Columbus, an employer-led initiative to achieve pay equality for women in the workforce has received a commitment from nearly 300 employers. In a tight job market with an increased focus on DEI, employers are also leveraging AI to broaden candidate pools, reduce biases and improve the hiring and retention process.

The report shows that employers are entering a pivotal phase in workforce management, filled with new challenges but also great opportunities. From March 12, 2020 – March 2022, there have been 5,666 lawsuits (including 990 class actions) filed against employers due to alleged COVID-related labor and employment violations (with Ohio among the top five states for litigation), underscoring the importance of tracking legal and workplace developments. Ultimately, organizations that adapt their policies for the "new normal" will mitigate risks and grow stronger. ■

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