



## 小公司需要全职律师吗？

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——小公司用不着聘请全职律师，对吧？

——关于这个问题，不可贸然定论。

现代生活正变得越来越复杂。从前，人们不需要请全职律师或是能处理类似事务的人，因为人家不会起诉你，你也不会起诉别人。在某起纠纷中，如果你是过错方，通常会无怨无悔地承担后果；如果你是受害方，你也会与对方协商处理。但这些都是现代诉讼制度产生之前解决问题的方式，如今每年有大批大学生毕业后要走上律师岗位，他们需要一份工作，于是转瞬之间，我们已置身于一个与以往截然不同的世界。

可能你会认为这种现象只发生在美国，并不会出现在中国。不过，在读完这篇文章之前，你最

好先别急着这样下结论。我们有理由相信，至少从商法角度来看，目前中国相关事务的发展趋势正变得越来越美国化。

那么，哪些领域和哪些事务会促使你考虑聘用一位全职律师呢？以下这些是你必须思考的问题：

**知识产权：**如果你开的是一家科技公司，或者是开发出自己独有的新产品、新服务的公司，当其他企业山寨了你们的技术、产品或服务模式的时候——这种事时时刻刻都在发生——你绝不能置之不理，否则研发知识产权的大笔投入就打了水漂儿。此时，你至少需要外聘一位律师来帮你保护自己的合法权益。

**人力资源问题：**这是一个大范畴，其中包括薪酬纠纷、补助津贴发放、不公正解雇、员工盗窃、医保问题、职业安全等一些细分领域。

现阶段，种族歧视、文化多样性、变性者的人权保护、雇员滥用药物、性骚扰等问题在中国的企业中还不突出。但有朝一日这些问题也可能成为中国要面对的问题，这类问题起初会发生在跨国公司，然后蔓延到中国的私营企业中。

另一方面，企业没有全职律师的时候，你难免还要经常外聘律师来处理以下这些躲不过去的法务问题。

**产品质量与安全：**你公司的产品或服务的质量怎么样，客户满意吗？会不会不时出些岔子？在美国，由这些问题引发的个人或集体诉讼案数以百万计。

目前，这类诉讼在中国还不是很多，但随着消费者自身权益保护意识的不断提高，相关诉讼案例增多将在所难免。要知道，在任何情况下都必须确保公司产品或服务的质量。这种保证通常要以书面形式加以确定，客户会因此感到安心，而同时公司自身的合法权益也有了保证。之前你有没有考虑过这些事？要是没有，早晚有一天你的客户及其律师会替你考虑的。到那时，你就不得不给对方一个说法了，甚至可能要对簿公堂。

**供货商和供应链：**供货商是为你的公司提供原材料和零部件的人。假设你是一个食品生产商，如果发现供货商提供的原料含有毒成分，你会怎么做呢？通常首先要将此事通知供货商，然后两家坐下来平心静气地解决问题。但如果这是供货商有意为之的话，又当如何呢？如何维护自己的合法权益，如何走法律程序，又该请什么样的律师代理呢？

**合同与协议：**你的公司可能要跟员工、合作伙伴、供货商、分销商等各方签署很多协议。如果他们中有人违反了协议，你将如何与其交涉呢？

另外，如果是你这方面出现违约，怎样在法律框架内为自己辩护，从而将不利影响降到最低呢？当然，最重要的还是要弄明白如何才能避免违约，但如果是你手下员工的私人行为导致的违约，又该

三类法律事务人才：

1

公司外聘的律师

2

公司自己的全职律师

3

没有律师执业资格但接受过法务培训的人

怎么办呢？

以上这些问题的解决都离不开诉讼，而打官司通常是很费钱的。如何避免这类昂贵的诉讼行为呢？如果不得为自己辩护或是必须起诉对方，怎样处理才能达到最理想的效果呢？具体来说，如何尽量降低诉讼成本？如何维护公司声誉？如何留住客户和合作伙伴对自己的信任？如何维护公司的品牌价值和市场份额？

### 没有完美的律师类型

从来源看，能为你的公司处理法律事务的人才主要有这么三类：公司外聘的律师、公司自己的全职律师、没有律师执业资格但接受过法务培训的人。

大多数公司的选择是去律师事务所聘请律师，这种做法有以下好处：

1. 他们通常是某个特定领域的法律专家。在法律条文越来越细化的今天，精通某个相关领域显得非常重要。
2. 他们的背后有专业律师团队的支持，这能进一步确保他们在处理法律事务时不犯错误。
3. 遇事时再去找他们即可，可以节省平时的开支。
4. 他们是深耕某个市场领域的专业人士，能够成为你的智囊，为你提供有价值的未来市场趋势和法律走向的情报信息。

但外聘律师也会带来如下一些问题：

1. 他们是自由代理人，可能会在你不知情的状况下同时为你的竞争对手提供服务。
2. 如果他们为其他公司工作，有可能在你不知情的状况下泄露你公司的机密。
3. 他们通常会漫天要价。
4. 在实操阶段，他们可能会让所里知识和经验积累都还不足的初级律师来替他们做事，这可能会使办案质量大打折扣。
5. 他们可能对你的独门生意并不懂行。在这种情况下，他们从法律角度给出的建议对你来说可能并不适用。
6. 即使你对他们的服务感到不满也很难起诉

他们，因为你公司里的秘密已经掌握在他们手里。而且，因为他们在法律界人脉甚广，就算你占理，也很难打赢起诉他们的官司。

那么，像有些公司那样，为公司招聘一位全职律师怎么样呢？这种做法有如下好处：

1. 忠诚度高。全职律师是公司的员工，他不得为其他公司，包括你的竞争对手服务，也不必像外聘律师那样要顾及所在律师事务所的利益。他的老板只有你一个人，在工作中必须完全为你的公司的利益考虑。

2. 成本低。当然他们要为自己争取一份高薪，但那与外聘律师开的价码比起来还是低多了。而且在处理公司法律事务的过程中，你能明白无误地知道为你做事是专业性很强的律师，而不是外聘律师手下那些知识、经验和资历都很欠缺的初级律师。

3. 熟悉公司业务。公司的全职律师会很熟悉公司的具体业务，因为他要么是你从业内挖来的人才，要么接受过你的相关业务培训。在这种情况下，他不但熟悉公司所处的行业，也很熟悉公司自己的细分业务。全职律师比外聘律师要更为熟悉业务，这使得他们给你的法律建议会更符合公司业务需求，更接地气。

说到这里，你大概会更想请一位全职律师了吧？但这种做法同样存在一些问题：

1. 每一位律师往往都是术业有专攻，不可能精通所有法律领域。你不能要求公司的全职律师是精通劳动法、知识产权法、产品质量法等各类法律的全才。因为即便他是专家，那通常也只是某个领域的专家，他这一个人是无法与律师事务所的律师团队相匹敌的。在这种情况下，为了尽量照顾全面，公司可能不得不聘请多位全职律师。这样一来，公司付出的成本可能比请外聘律师还高。

2. 全职律师很可能在某些法律知识方面有所欠缺，而可能恰恰正是这些知识决定着官司的胜负。

在美国，小公司的通常做法是雇佣一位律师做公司的全职法律顾问，他一般是某个主要商业法律领域的专家。与此同时，公司会更多地向律师

全职律师的好处

1

忠诚度高

2

成本低

3

熟悉公司业务

事务所征询有关事务的法律建议，但公司的法律顾问负责对这些建议把关。

如今，随着教育发展和科技进步，社会上还诞生了一些新的律师类型。

“赤脚律师”

20世纪30年代，“赤脚医生”这个概念诞生在中国，整个赤脚医生系统在上世纪60年代得到发扬光大。“赤脚医生”并不是真正的医生，他们受过基本的医疗技术训练，有能力处理大多数小病小灾。这一举措既增加了医务人员数量又降低了整体的医疗成本，而这个想法完全可以应用到法律领域。

在美国，法律专业的大学毕业生数量庞大，当然，这是一件具有正面意义的事。如今，美国企业界正在形成这样一个新趋势：一些公司乐于雇佣还不具备独当一面能力的年轻的法律英才，然后将其培养成为某个法律业务领域——比如人力资源、消费者权益、知识产权——的专才，以为公司效力。

这意味着，这些年轻的法律专业毕业生既能拥有公司所在业务领域的知识，也能担负起自己特定的工作职责。在他们身上，工作经验、业务知识与法律视野得到了很好的融合。

在某些时候，这些公司也需要外聘法律顾问来处理一些特殊事务，但这些外聘顾问只需提供少量的法律建议，所以公司在这方面的开支也不会太多。与此同时，公司雇佣的年轻法律英才能够发挥全职法律顾问的作用，为公司梳理这些来自外聘顾问的建议。因为公司内的这些年轻人既了解公司业务又忠诚于公司，所以经过他们梳理的建议对公司来说更有可行性。

这些法律专业毕业生并不是真正的执业律师，所以雇佣他们的成本远远低于聘请执业律师的开支。这些法务人员与外聘专业律师构成的混合型团队，能够达到降低成本和提高建议质量的双重效果。有了他们的协助，公司在面对法律纠纷和其他法律事务的时候，就能够更加有效地维护自身合法权益和公司声誉。

## 不要试图让一个法务人员负责所有的法律事务,因为这会严重局限解决方案的选择范围。

### 外包律师

互联网的出现,为律师和律师事务所的工作方式带来了变革,同时它也改变了美国公司聘请律师的方式以及律师在公司中扮演的角色。

在美国,有的公司正越来越多地把某些法务工作外包给海外的律师事务所,其中以印度的律所最为多见。虽然这些海外律所并未被赋予常规外聘律所的全部职能,但它们可以承担起部分职责。这种做法有利于降低雇佣方的成本。

具体来说,被外包的法务工作一般包括以下内容:

1. 常规法律合同与协议的准备;
2. 日常的例行法务工作;
3. 开庭前的例行应诉准备工作;
4. 对大型法律案例的研究;
5. 常规的法律尽职调查,如在海量的电子邮件数据库中查找证据。

尽管以上这些工作可能与我们头脑中对律师工作的想象不大一致,但它们确实占据了一个外聘律师60%~70%的工作量,所以采用这种外包方式能将外聘律师的开支降低一半以上。同时,由于外包降低了外聘律师的工作强度,他们因而能够将自己的精力更多地用于攻克相关案件的难点,或是去处理那些出于法律限制和文化差异而不能外包的案件。

美国公司之所以能这么做,是因为英语是世界语言。与之相对的是,中国公司就很难将法律事务外包给海外律所处理,因为大多数外国人都不懂中文。但一些开在大城市的中国公司可以参照这种外包做法,将一些日常法务工作外包给小城市的律

师事务所,尤其是一些地处西部省份的律所,这同样能降低公司的法务成本。

### 签约律师

互联网还提供了另外一种雇佣律师的方式——企业不直接雇佣上述任何一种律师,而是通过互联网与律师签约,让他们通过网络完成特定的工作。这类通过网络签约的律师通常不隶属于任何律师事务所,他们独立完成工作,所以雇佣成本也相对较低。当然,他们的工作质量也相应地不会特别高,但处理一些日常工作还是没有问题的。

如果公司能跟签约律师建立起良好关系的话,他们中的一些人会像公司全职律师那样忠诚于公司,而公司付出的成本也会比雇佣全职律师低很多。公司可以安排一位部门经理(即某位“赤脚律师”)来统筹领导签约律师们的工作。这构成了一种全新的公司法务部门的组织方式。

### 小公司的律师雇佣方案

当今社会,小公司处理法务问题的最佳方式是什么呢?我认为这种方式应当包含以下一些要点:

1. 雇佣一些“赤脚律师”。你可以把这些拥有法律专业学位的人才直接安排到公司的各个业务部门中去,让他们参与产品开发、人力资源、产品质量控制等环节的管理工作,并以常规的方式让他们得到晋升;
2. 外聘一些律师,让他们与“赤脚律师”协同工作;
3. 从海外(或中国的西部省份)雇佣外包律师,去处理大量的常规性法律事务;
4. 让签约律师在公司部门经理的组织领导下完成某些工作;

5. 不要试图让一个法务人员负责所有的法律事务,因为这会严重局限解决方案的选择范围。如果公司确实要聘请一位全职法律顾问的话,那前提应当是公司在各业务部门中安排了一些“赤脚律师”,这两类人配合工作也能收到不错的效果。📌

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## “Should A Small Private Company Have A Full-Time Lawyer?”

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You wouldn't need an in-house lawyer if you are a small private company, right? Well maybe you need to think about this some more.

Modern life is getting so much more complicated. In the old days you didn't need an in-house lawyer or for that matter any lawyer. People didn't sue you and you didn't sue them. Usually you just took it on the chin if you were in the wrong and if you were in the right you worked things out with the other party. But that was before we invented modern lawsuits, and universities started to graduate huge numbers of new lawyers. And they all need a job. So suddenly we are in a totally different world.

You might think that's just a US phenomenon, and it doesn't apply to China. Maybe you should reserve judgment until you have read the rest of this article. Suffice it to say that even in China things are getting more like things in the US from the perspective of commercial law at least.

So what are the areas and issues that would make you start to think about having an in-house lawyer? Here are a few just to start:

Intellectual property: say you are a technology company, or even another sort of company that has developed new types of products and services and another company copies them. Happens all the time. You can't just leave it otherwise you lose you intellectual property that might have cost you a lot of money to develop. At the very least you will need an outside lawyer to protect your legal position.

Human resources issues: this is another huge area. Some of the legal areas in HR include:

- Salary and compensation disputes
- Benefits
- Unfair dismissal
- Employee theft
- Health coverage and insurance
- Occupational safety

China doesn't yet have issues such as discrimination, diversity, transgender rights, private drug use by employees and sexual harassment. However these areas are sure to become issues in China too, probably starting first with the multinationals but then extending to private Chinese companies.

Again, even if you don't have an in-house lawyer to work on these issues, you will often have one or more outside lawyers dealing with them, so it's not as if you aren't being confronted with legal costs for these areas currently.

Product quality and safety: Does your product or service work correctly or well? Does it break down sometimes? Are your clients happy with its quality? Well in the US that is a reason for millions of lawsuits and even class-actions.

That might not be happening in China yet, but as consumers get more aware and stand up for what they see as their consumer rights, you should expect more of these lawsuits. In any case, your product or service may have a guarantee or implicit warranty that it works correctly, and this will have to be written and prepared in such a way as to make your buyers feel good about the product while still protecting a company's legitimate position.

Never thought about that? If you haven't, your buyers and their lawyers will think about it for you and you will have to respond in some way – legally often.

Your own vendors and your supply chain: You rely on vendors to supply you with parts or components. What happen if you are a food manufacturer and you find that one of your suppliers has been supplying you with tainted ingredients? What can you do?

Usually the first thing is to inform them and work it out peacefully but maybe the supplier was doing it on purpose? What are your legal rights? How can you pursue them? What sort of lawyers do you need to do this?

Contracts and agreements: Probably your company signs a lot of agreements. With your suppliers and vendors, with partners and distributors, with employees and so on. What happens if any of these breaks the agreement? Who works this out with the other party?

And another issue: what happens if your company breaks its agreements? How do you protect yourself then from legal retribution, which might well be justified? How do you prevent your company from infringing in the first place? What if it was your employees who infringed without management knowing about it?

All of these issues can bring about a need for litigation, either on your own behalf or someone else's. Litigation is usually expensive. How do you avoid it? If you have to defend yourself, or make a complaint against another party, what is the best way to do it?

And when you do it, how do you participate in the legal action at least cost? How about protecting the reputation of your company? What about keeping the trust of your customers and particularly your partners? What do you do to protect your brand and your market positioning?

So Many Lawyers, So Few Choices

Actually you have 3 main choices:

- Outside lawyers
- Inside lawyers
- Using legally-trained non-lawyers

Most companies use external lawyers from outside law firms. They have a number of advantages:

1. They are usually expert in their particular field; these days as law gets more complicated, that is very important
2. They are supported by a team of other lawyers who are also expert who can make sure they don't make mistakes

3. You only pay them when you need them
4. They are plugged into this particular area of the market and can give you valuable intelligence about market and legal trends within it

But using outside law firms also can be associated with a number of problems too:

1. They are free agents and can work for your competitors without you knowing it
2. If they are working for other companies they can pass on proprietary information without you knowing it
3. They can often over-bill you
4. They can substitute junior lawyers who have little knowledge and experience for senior lawyers so the quality of your legal work suffers
5. They don't usually understand your own particular business and can inadvertently offer you advice that is not appropriate in business terms, even if it's correct legally
6. If you do have a complaint against them, it's often very difficult to sue your outside law firm because they know your internal secrets and they have legal relationships that are hard for you to fight against, even if you are in the right.

So how about hiring lawyers as in-house company counsel, as many companies do? There are some considerable advantages in doing this. These include:

1. Commitment: an inside lawyer belongs to you. He or she can't work for another company or competitor. They are going to be loyal to you, rather than to the law firm that employs them.
2. Low expenses: Sure they might want a high salary but compared to the fees from an outside lawyer, this is still cheap. Also they can't overbill you. And you know that the advice and work you are getting came from your inside lawyer not from someone junior who lacks the knowledge, experience or qualifications.
3. Knows the business: Your inside lawyer also knows your business. Either you hired him from your industry, or you have trained him in it. So he knows not only your own industry, but also your own particular business. An inside lawyer almost always knows far more about your business than an outside lawyer and that can lead to better and more relevant advice from a business, as distinct from a legal perspective.

So can you instead have inside lawyers? Yes, it's possible, but here again there are some significant disadvantages:

1. It's almost impossible for you to match the expertise that a law firm has in its own particular field. For example, it's very difficult to have an inside lawyer who is expert enough in human resources law, intellectual property law, product law and so on. Even if you do get an expert, it's usually only in one field. And also it's almost impossible for them to match the level of knowledge of a team of specialized lawyers from one law firm.
2. In order to match the expertise of outside law firms, you would have to hire a number of lawyers. That would end up costing more than using outside law firms in most cases.
3. Inside lawyers are more likely going to have gaps in specialist legal knowledge that could mean the difference between success and failure in particular cases and issues.

In the US, smaller companies often have an in-house counsel who is a lawyer with expertise in one of more of the main commercial areas. But they rely on outside firms for most of their legal advice. This advice is controlled through the role of the in-house counsel.

However two new alternatives are emerging which are being driven by both educational and technology trends.

## “Barefoot” Lawyers

China pioneered the idea of “barefoot” doctors in the 1930s and expanded the system in the 1960s. These are people who have been trained in basic medical techniques but who are not doctors who are used to address the vast majority of small medical problems. This increases accessibility while reducing costs. This idea can be applied to the field of law.

In the US there are now too many law graduates. However this has an upside.

An emerging trend is for companies to hire young law graduates who have not passed the bar and then train them in particular areas such as human resources, or consumer or intellectual property issues.

This means that these young lawyers can be trained in the company’s particular business, and in a particular job role, so they possess both the job knowledge, the business knowledge together with a good legal perspective.

It’s still the case that many of these companies will have to hire outside legal counsel in particular areas, But they will need much less outside advice and so it will cost them much less for this advice. In addition the advice they get is better since it includes not only the expert outside legal knowledge but it is also filtered through inside law graduates who are committed to the company and who understand the company’s business very well.

Since these inside law graduates are not full lawyers, they also cost much less than someone who has passed the bar exam. So these hybrid inside lawyers reduce costs and increase the quality of advice and therefore the legal and reputational position of the company in legal cases and with other legal issues.

## Outsourced Lawyers

The internet is also revolutionizing the work of lawyers and law firms, just like it is revolutionizing everything else. It is also changing significantly how US companies both large and small use lawyers and the roles they put lawyers in.

In the US it has become increasingly common for US firms to outsource some of their legal work to outside law firms in overseas countries, particularly in India. While these firms can’t do everything that a normal outside law firm does, they can do some of it. This reduces cost.

Nowadays US firms are outsourcing some of the following work to overseas law firms:

1. Preparation of routine legal contracts and agreements
2. Conducting routine depositions
3. Preparing for routine legal cases in courts
4. Conducting legal research for big cases
5. Carrying out routine legal due diligence such as sifting through huge databases of emails for evidence

While these are not the high profile duties we usually associate with lawyers, they probably account of 60-70% of the work of an outside lawyer so this approach can often reduce costs by more than half. This leaves the outside lawyers to focus on the more difficult, sophisticated part of the legal task and also on these tasks which for legal and cultural reasons can’t be outsourced to foreign lawyers.

Of course, In China, this might be more difficult since most countries don't speak Chinese; in the US we can do it because English is so widely spoken. However in China the equivalent would be to outsource some of the routine law work to law firms outside the major cities for example in the Western provinces where costs are much lower.

### Contracted Lawyers

The Internet is also providing another approach to using lawyers. This is that a company does not employ any lawyers, but just contracts lawyers for particular jobs over the internet. Most of these lawyers are individuals who are not in a law firm at all. They work on their own and their costs are therefore much lower. Of course, the quality might not be so high, but if the work they are doing is routine, this might not be a big issue.

If you build up your relationships well with your contracted lawyers, some of these might turn out to be as loyal and committed as internal lawyers, and they will be much cheaper. They can be controlled by your internal line managers (your "barefoot lawyers") who have law degrees. So this is another approach to organizing your law function in your company.

### What's The Right Way?

In today's world, when a small company is thinking about how to address legal issues in the best way, I think that the following is the way to go:

1. Hire "barefoot lawyers" - some people with law degrees who you will be placed in normal company line management such as product development, human resources, product quality and so on and then promote them up the line in the normal way
2. Use external lawyers but have them interact with these legally-trained people in normal line jobs
3. Use outsourced lawyers for large routine tasks, either from overseas or the Western provinces.
4. Use contracted lawyers for some work, and have them report to line managers with law degrees.
5. Try not to have one legal person responsible for all legal issues, because this narrows a company's choices too much; however if you do hire an in-house counsel, do it in the context where you have internal people with law qualifications in some line positions

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