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# **Returning to the Office: Leasing Tips Every In-House Counsel Should Know**

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# Introduction

- Leases are living, breathing documents. You cannot put them in a drawer and forget about them.
- Leases are also typically obligations of the tenant that will last for the entire lease term without direct exit options.
- In the COVID environment, your lease can affect your return to work considerations.



# Rent

- Understand the type of rent you pay (base rent, gross rent or base year).
- Understand your operating expenses.
- Carefully review the reconciliation received from the landlord and your audit rights.
- Two traps to be careful of: (a) the landlord who does not charge the annual increases, and (b) in California, because of Proposition 13, a dramatic increase in taxes if the building is sold.



# Use of Premises and Building

- What facilities do you share with other tenants? How do your rights compare to other tenants' rights?
- How shared space been changed by COVID?
- Be mindful of more troublesome permitted and prohibited uses.



# Changes to Premises

- Look out for particularly expensive compliance with laws requirements.
- When making alterations to premises, check when the landlord's consent is required and what the tenant needs to provide.
- Consider whether the newly installed alterations will have to be removed at the end of the lease term.



# Assignment and Sublet

- This is a tenant's best exit strategy.
- Be aware that assignment clauses can come into effect if the tenant is doing corporate transactions under the “operation of law” provision. If you are buying a company or your company is being sold – you may need your landlord's permission first.
- Be aware that the landlord may have the right to take the premises back.



# Insurance and Indemnity

- Ask your risk manager/insurance provider to review your lease provisions before you sign, and when you renew your insurance, make sure it meets all of the lease requirements.
- Typical insurance allocations.
- Waiver of claims and subrogation.
- Structure of indemnities.



# Additional Clauses to Review

- Be aware of what utilities are separately metered and which are included in operating expenses (or CAM) and which are paid separately.
- Estoppels and SNDAs.
- Be aware of what the landlord's rights are to come onto the premises and how disruptive the landlord can be.
- If the landlord is providing the janitorial services, be aware if there are any trade secrets you need to protect.





# End of Term

- When does the tenant have to move out? Rent for a hold over tenancy may be very expensive – double rent or more – and the tenant may be responsible for any damages the landlord incurs.
- Be aware of the tenant's obligation to remove improvements from the premises – this may actually require an early move out. We are seeing landlords become more and more aggressive on these issues.



# Possible Q and A Topics

- Interruption of services
- Security deposits and letters of credit
- Guaranties
- Remedies
- Initial condition and build outs
- Environmental concerns
- Landlord's limitation on liability



# Thank you.