



The State of Corporate Litigation Today

SURVEY REPORT

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INTRODUCTION

The Association of Corporate Counsel (ACC), in partnership with Everlaw, is pleased to present *The State of Corporate Litigation Today Survey Report*, which captures insights from 202 in-house counsel and legal operations professionals on how their legal departments handle different aspects of the corporate litigation process. The report is intended to help in-house legal professionals better understand the outside counsel selection priorities for litigation matters, the tools departments are using for litigation workflows, the most common cost containment strategies, and how litigation needs are expected to change over time.

The results show that monetary and reputational risks to the business are the most significant challenges in the litigation response process, in addition to the unpredictability of litigation outcomes and costs. The ability to address the complex nuances of the litigation subject matter, jurisdictional, or geographical needs is a top priority. Therefore, respondents cite industry expertise as the primary need when selecting outside counsel, above existing relationships and price.

Thirty-one percent of departments said their company's litigation increased over the past year, nearly half said matter times are increasing, and the average cost per matter is now over US\$100,000. In order to contain the costs of these increases, departments are moving more work in-house and are attempting to better balance the work that is sent to law firms and managed services providers. Given this environment, respondents believe that the most critical non-legal skill for the next generation of in-house professionals is the ability to adopt new technology.

These and many more findings are revealed throughout the report, which we hope will illustrate the trends occurring within the complex corporate litigation environment. We would like to thank those who took the time to participate in the survey and we hope this report serves as a useful resource for the broader in-house legal community.



Key Findings

01

Industry Expertise is the Top Consideration Influencing Outside Counsel Selection for Litigation Matters

Forty-six percent of departments say practice area/industry expertise is the top factor they consider in their outside counsel selection process for litigation, followed by their existing relationships (27 percent), and price as a distant third (nine percent). Expertise in addressing subject matter, jurisdictional, and geographical needs is the most important rationale for engaging outside counsel in the first place (88 percent), followed by being able to complement the corporate team's capacity (50 percent).

02

Monetary and Reputational Risks Are the Top Business Challenges in the Litigation Response Process

Thirty-one percent of departments said their company's litigation increased over the past year, 46 percent say matter times are increasing, and the majority of litigation matters will cost over US\$100,000. Given the myriad of challenges faced in litigation, the top risk cited is the monetary and reputational risk to the business (38 percent), followed by the unpredictability of litigation outcomes (18 percent), the unpredictability of litigation costs (18 percent), and personnel constraints when managing outside counsel (12 percent).

03

Moving More Work In-house is the Most Cited Litigation Cost Containment Strategy

The most commonly cited strategy employed to control litigation costs is to move more work in house (59 percent), followed by better balancing the work that goes to firms and managed services providers (52 percent), and use of alternative fee arrangements with outside counsel (35 percent). The least common strategies involve leveraging technology or artificial intelligence (12 percent), specifying preferred technology to outside counsel (nine percent), and separately engaging ediscovery counsel (six percent).

04

Employment & Labor and Breach of Contract are the Most Common Litigation Matters Faced by Legal Departments

By far, the most common litigation matter categories faced by legal departments are employment and labor issues (70 percent) and breach of contract (58 percent). Business torts, class actions, and intellectual property and patent infringements tie at a distant third (all 18 percent). Just over 60 percent of litigation spend per matter is allocated to outside counsel costs for E&L and breach of contract matters, whereas securities litigation and anti-trust matters tend to require closer to 90 percent of total costs going to outside counsel.

05

Almost Half Say the Top Skill Needed for the Next Generation of In-house Legal Professionals is the Ability to Adopt New Technology

Fifty-six percent of respondents say they expect their department's technology needs will increase in a year from now and 85 percent say that in-house legal professionals need to understand new technology and its impact on legal work and operations. When asked what the most critical non-legal skill will be for the next generation of in-house professionals, 47 percent said it will be the ability to adopt new technology. This percentage is over three times higher than that of the second and third skills listed, which include the ability to navigate complex ethical issues (15 percent) and empathy and understanding (15 percent).



01

Outside Counsel Selection

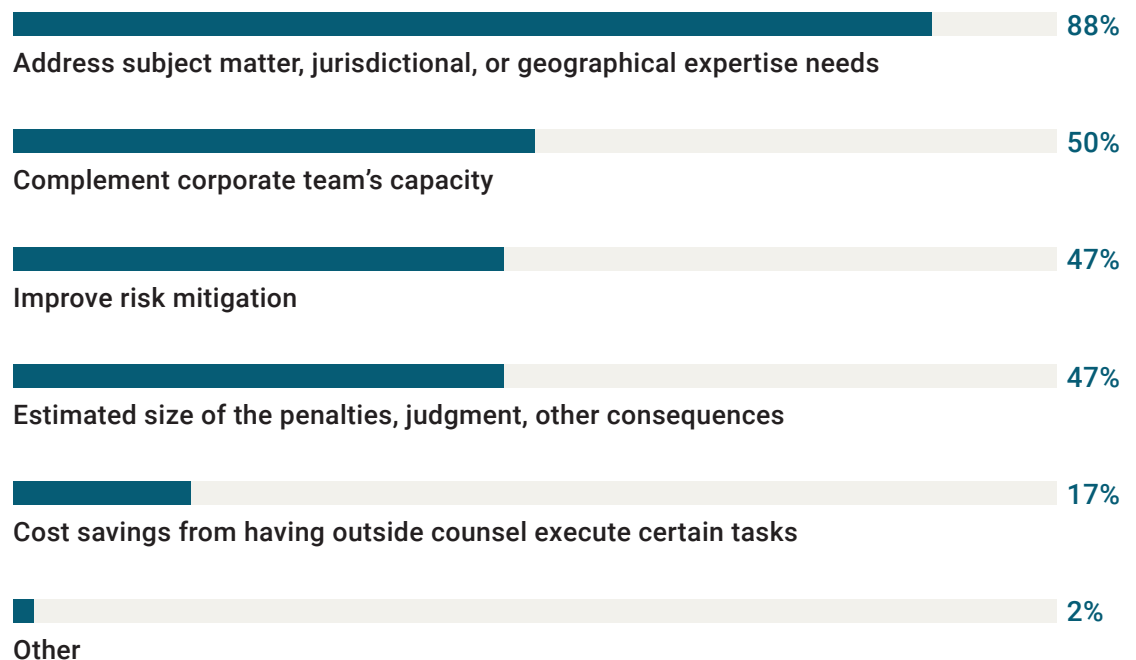


In this section, survey participants shared their insights on the factors contributing to their outside counsel selection process, the methods used to select specific vendors, and the average hourly cost of outside counsel services.

The top priority used as a rationale to engage outside counsel to help resolve litigation matters is the ability of law firms to effectively address the subject matter, jurisdictional, or geographical expertise needs. This was by far the top priority with 88 percent of respondents. Half said they need law firms to complement the corporate team's capacity and 47 percent said outside counsel help to improve risk mitigation and are able to estimate the size of the penalties, judgements, and consequences. Cost savings was the least used rationale on the list, selected by just 17 percent of respondents.

Which of the following priorities do you use as rationale for engaging outside counsel to help resolve a litigation matter?

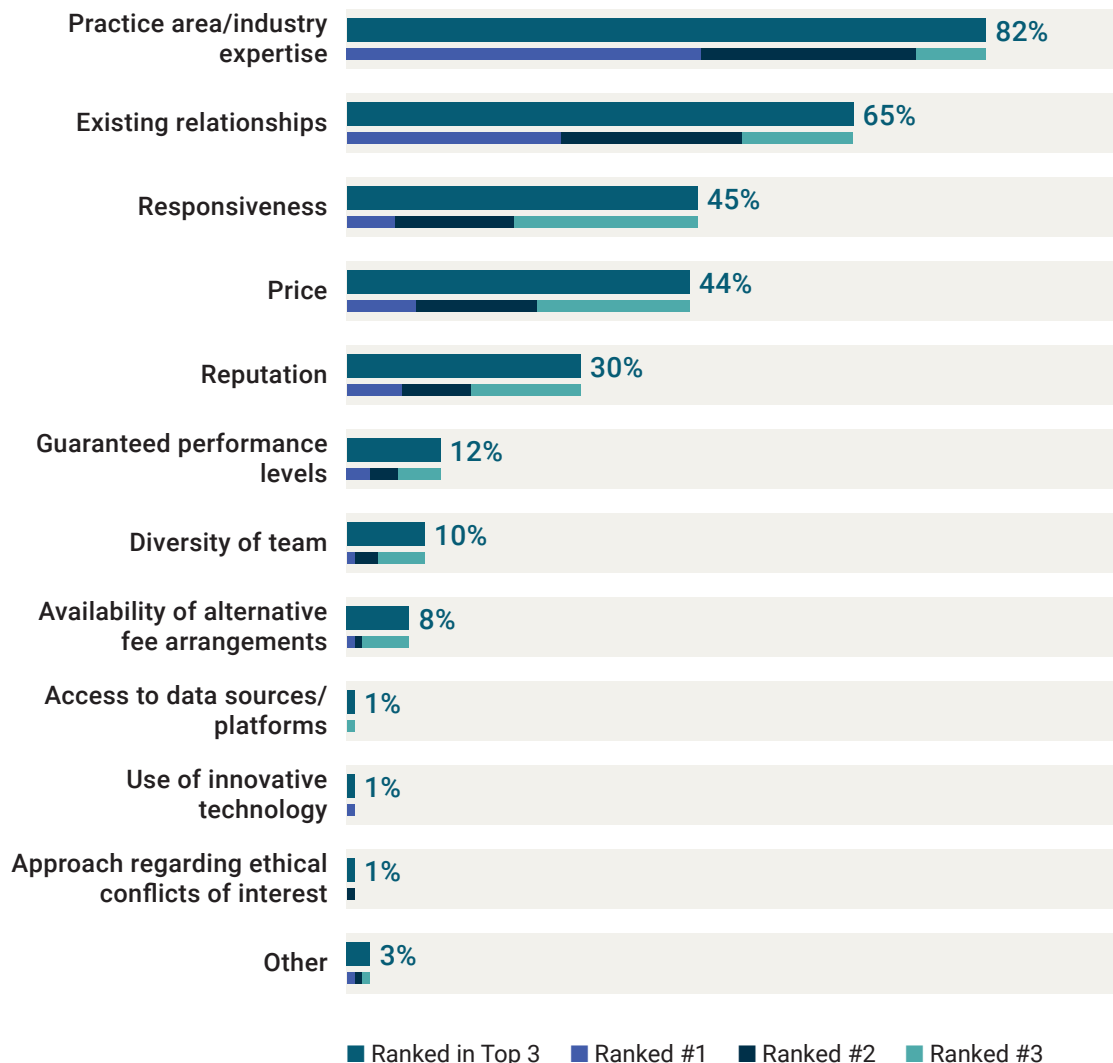
(Select all that apply)



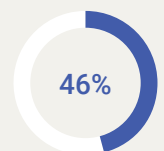
A wide variety of factors impact the decision to hire specific firms to assist with litigation-related matters. Respondents were asked to select up to three factors that primarily influence their outside counsel selection and rank these factors in order of importance: most important (#1), second most important (#2), and third most important (#3).

What factors primarily influence your outside counsel selection?

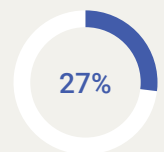
(Select up to 3 and order from MOST to LEAST influential factors determining your selection)



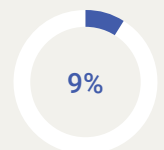
MOST INFLUENTIAL FACTORS



Practice area/
industry expertise



Existing
relationships

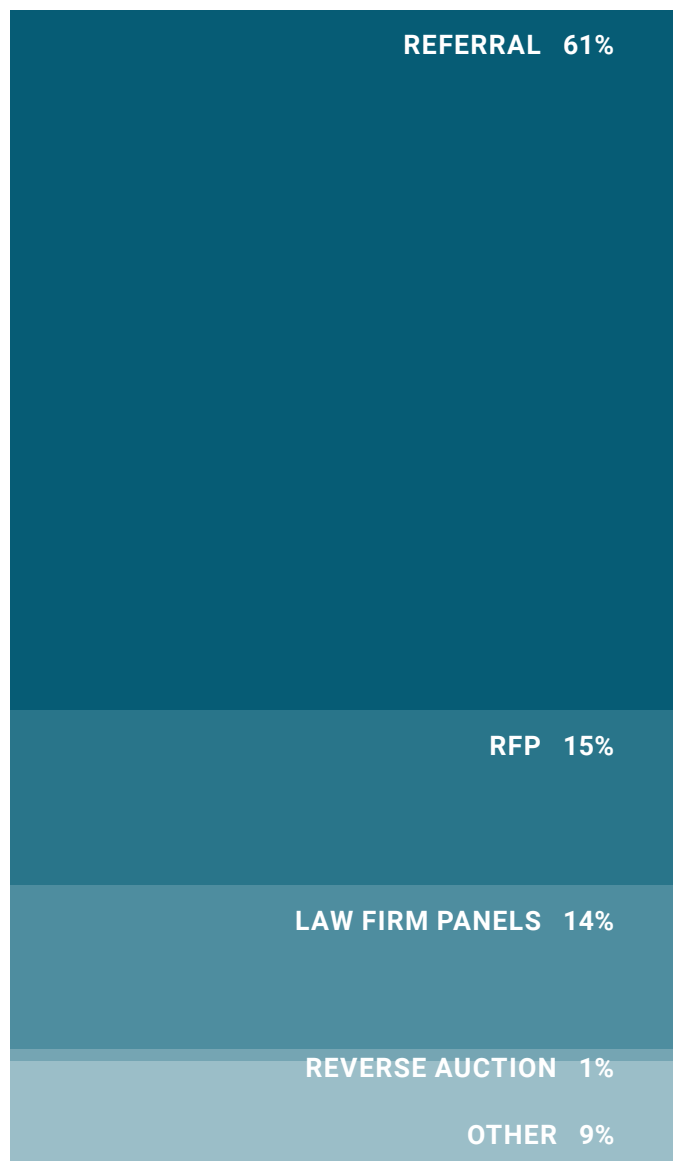


Price

Overall, the law firm's expertise in the practice area and industry knowledge is the most common selection criterion, considered by 82 percent of departments. Two-thirds leverage existing relationships with outside counsel providers to adjudicate litigation-related services, with 27 percent indicating that this is the most important factor in selecting a specific law firm. Forty-five percent of respondents value the law firm's responsiveness and 44 percent factor in the price of outside counsel services in order to decide which specific provider to engage.

Access to data sources/platforms, use of innovative technology, and approach regarding ethical conflicts of interest are the least important outside counsel selection criteria.

What method does your department typically use to select which outside counsel to use?



Other Selection Methods

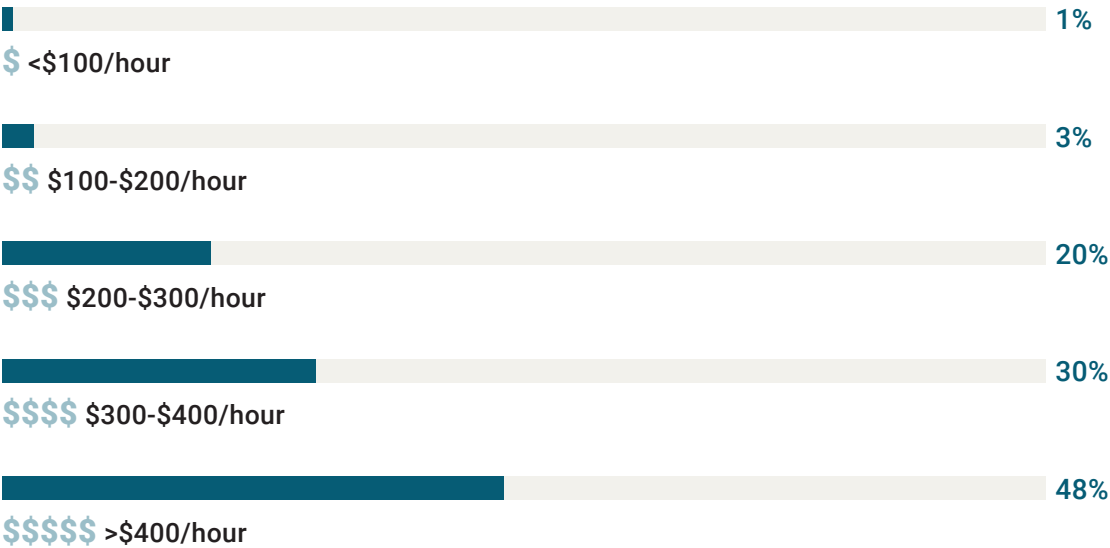
- Existing relationships
- Independent research
- Informal interviews
- Prior personal experience



Most legal departments select their outside counsel using referrals (61 percent), 15 percent use requests for proposals (RFPs), 14 percent use law firm panels, and one percent conduct reverse auctions. Nine percent of participants use other selection methods, including leveraging existing relationships with outside counsel, conducting independent research of law firms, informal interviews, and selecting firms based on personal connections and prior experience. Smaller organizations tend to rely more on referrals, with 73 percent of companies with under US\$100 million using this method compared to just 47 percent of companies with revenues larger than US\$1 billion. Departments in these large companies tend to make greater use of RFPs (23 percent) and law firm panels (20 percent).

In terms of outside counsel costs, nearly half of departments (48 percent) report that the average hourly rate for outside counsel services related to litigation exceeds US\$400, 30 percent spend on average between US\$300 and US\$400, and 20 percent pay average hourly rates ranging from US\$200 to US\$300. Only four percent of respondents report spending less than US\$200 on outside counsel hourly rates on average.

What is the average hourly rate your department spends on outside counsel for litigation?



TOP 3 INDUSTRIES WITH HIGHER OUTSIDE COUNSEL RATES

(PERCENTAGE THAT SPEND MORE THAN US\$400 PER HOUR)



73%
FINANCIAL
SERVICES



67%
BIOTECH/
PHARMA



57%
ENERGY



02

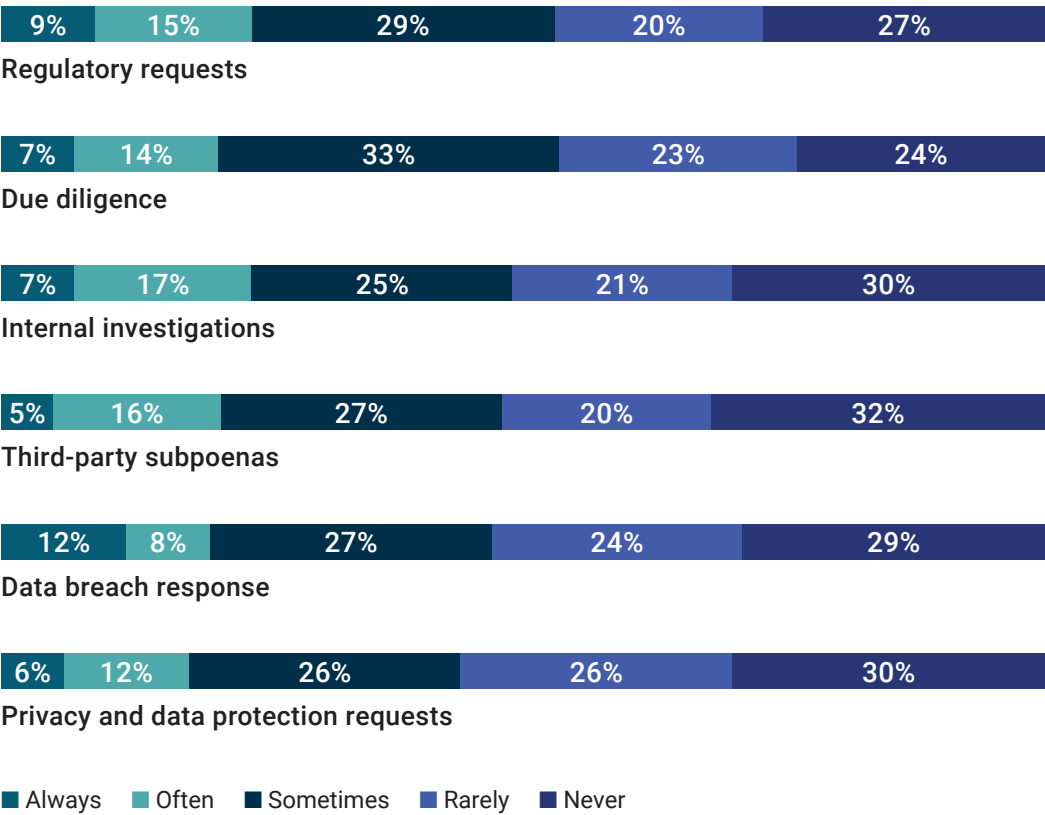
Litigation Processes & Workflows



Participants were asked about how they manage litigation processes and workflows, with a particular focus on ediscovery technology tools.

The following chart provides insights on how often legal departments leverage ediscovery workflows and technology for different aspects of litigation processes. The categories are sorted based on the number of departments that use ediscovery technology for these tasks at least “sometimes.” More than half of participants leverage technology at least “sometimes” to address regulatory requests and due diligence. Additionally, twenty-four percent use ediscovery for regulatory requests “often” or “always,” and 21 percent do so for due diligence purposes. Forty-nine percent use ediscovery workflows and technology at least “sometimes” to handle internal investigations, 48 percent do the same for third-party subpoenas, 47 percent leverage these tools to respond to data breaches, and 44 percent handle privacy and data protection requests in this manner. Between 24 percent and 32 percent of participants never use ediscovery technology for litigation-related processes.

How often do you leverage ediscovery workflows and technology for litigation adjacent processes?

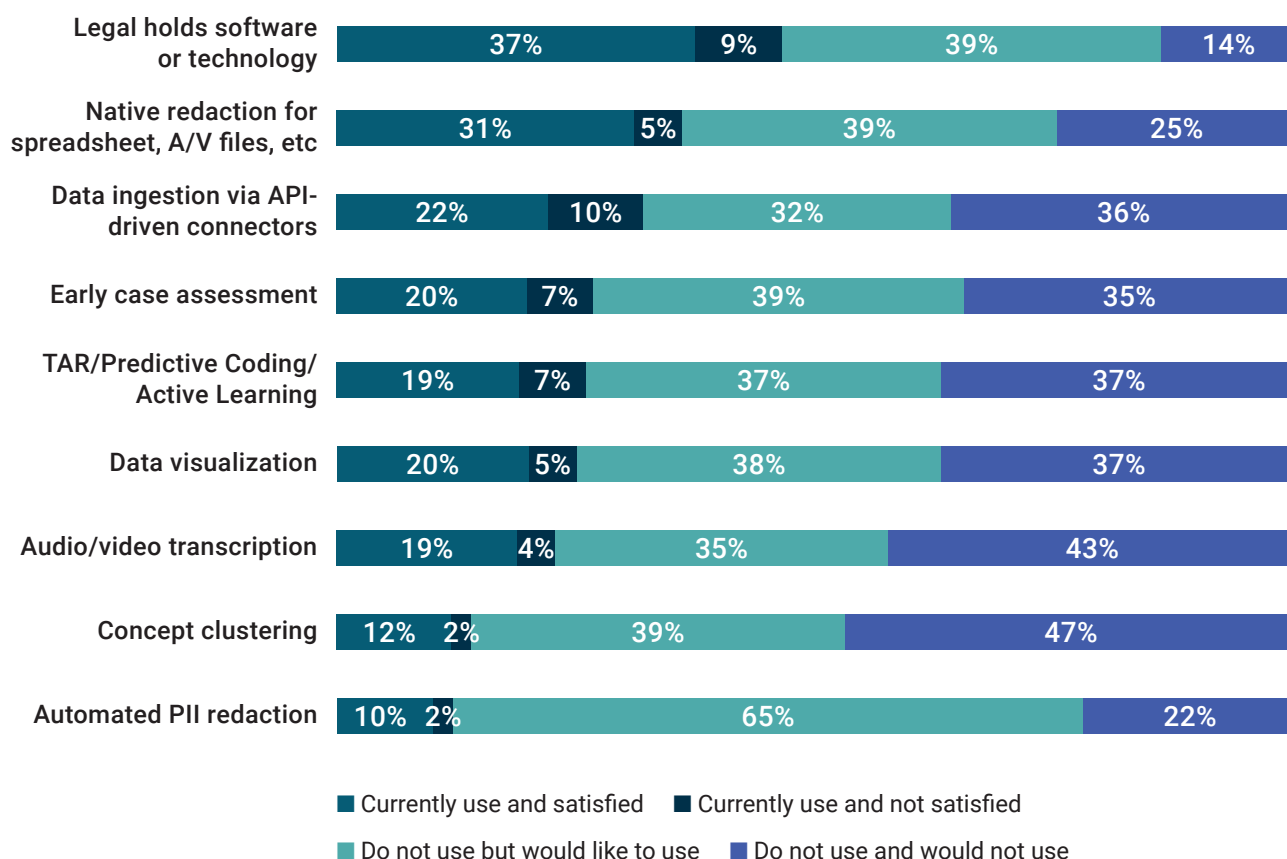


Respondents were also asked about specific technology tools designed to assist with litigation workflows and to what extent these tools are used in the legal department. Furthermore, those that use these tools could further specify whether they were satisfied with the tools' performance or not; and those who do not use them could further comment whether they would use them or not.

The categories are sorted by the percentage that use each tool for litigation workflows from highest to lowest, regardless of whether they are satisfied with the tool or not. Legal holds software is the most commonly used tool, with 46 percent of participants reporting using it and 37 percent indicating that they are satisfied with it. Thirty-six percent use native redaction tools, 32 percent use data ingestion tools, 27 percent employ early case assessment software, and 26 percent use TAR and predictive coding tools.

Participants who use technology tools to assist with litigation processes are mostly satisfied with them. Additionally, between 30 percent and 40 percent of participants indicate that they would use all these tools, and 65 percent would use an automated personally identifiable information redaction tool – which is incidentally the least common tool used by participants, with only 12 percent.

Tell us about your usage of the following tools for litigation workflows



How do you currently manage legal holds?

(Select all that apply)

A majority of legal departments use email to manage legal holds (51 percent), while 46 percent use specific legal holds technology software, and 35 percent track legal holds using spreadsheets. The use of legal holds software is more common in large companies, with 69 percent of departments in companies with more than US\$1 billion in revenue using this type of tool compared to under 31 percent in smaller organizations. The latter tend to use email, with 75 percent of companies under US\$100 million using this method. Only 33 percent of companies with a revenue larger than US\$1 billion use email to manage legal holds.

51%

EMAIL

46%

SOFTWARE OR TECHNOLOGY/
LEGAL HOLDS SOFTWARE

35%

TRACK ON SPREADSHEETS

4%

OTHER



03

Cost Containment Strategies

Legal departments face mounting pressure to limit their outside counsel expenses and participants were asked about which strategies they have in place to control litigation costs, the factors that are considered when deciding to settle a matter, and the most pressing business challenges and costs that departments face during litigation processes.

Moving more work in-house is the most common strategy to limit litigation costs, according to 59 percent of departments. Fifty-two percent attempt to better balance how the work is divided between firms, managed service providers, and specialty firms. Despite AFAs not being a priority during the outside counsel selection process, thirty-five percent say they try to employ the use of AFAs as a cost containment strategy. Other strategies used include data reduction (19 percent), leveraging the use of technology and artificial intelligence (12 percent), specifying or providing preferred technology to outside vendors (nine percent), and engaging ediscovery counsel separately from merits counsel (six percent).

TOP 3 INDUSTRIES THAT ARE BRINGING MORE WORK IN-HOUSE TO CONTROL LITIGATION COSTS



83% ENERGY

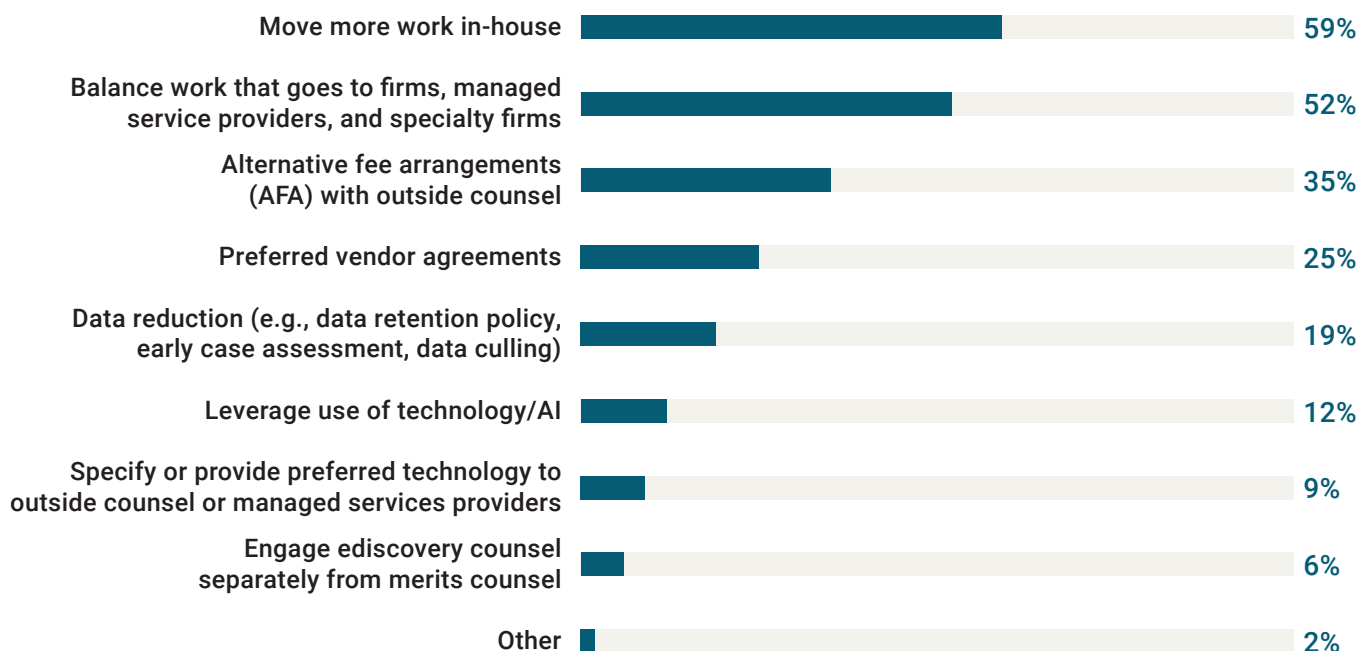



71% HEALTHCARE



71% INSURANCE

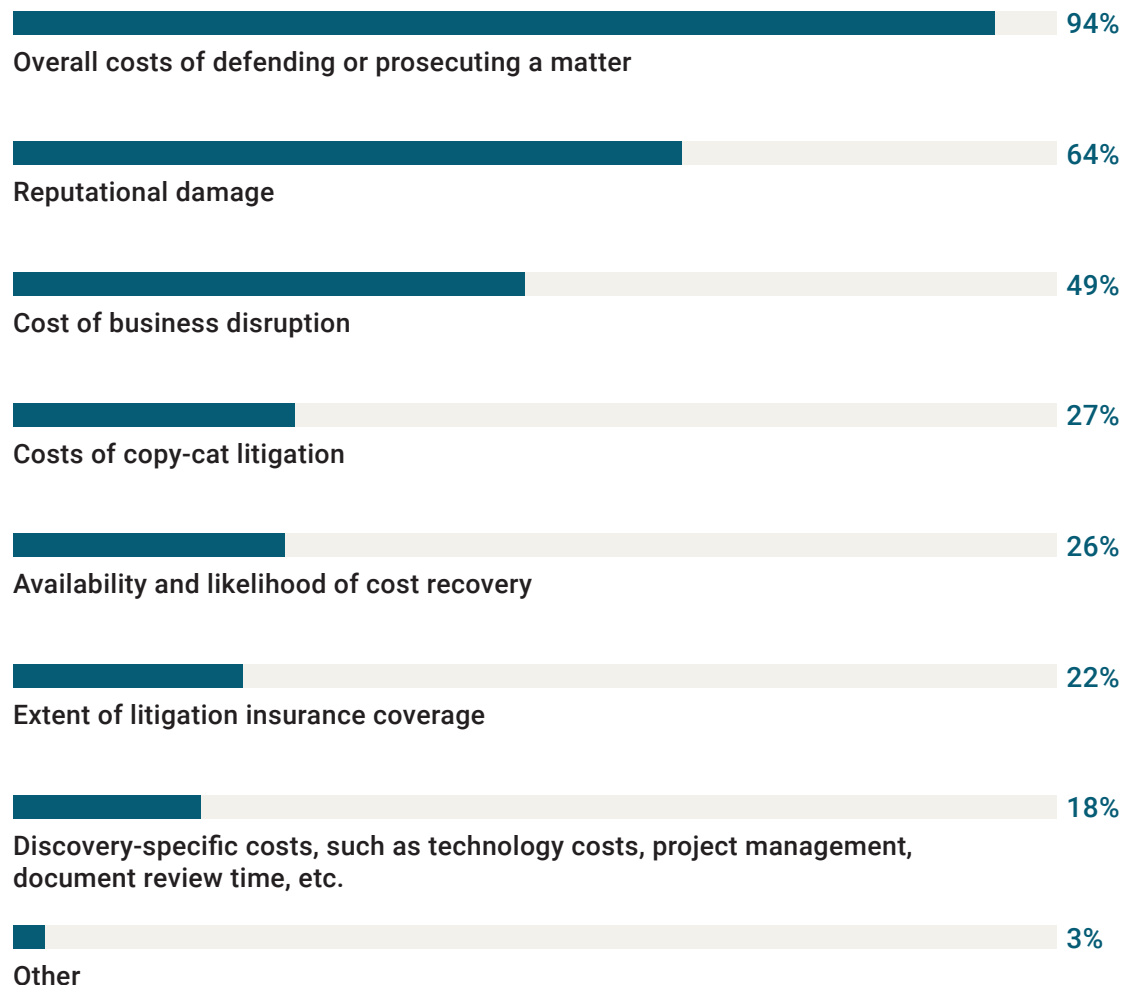
What are some of the strategies your department is employing to control litigation costs? (Select up to three responses)





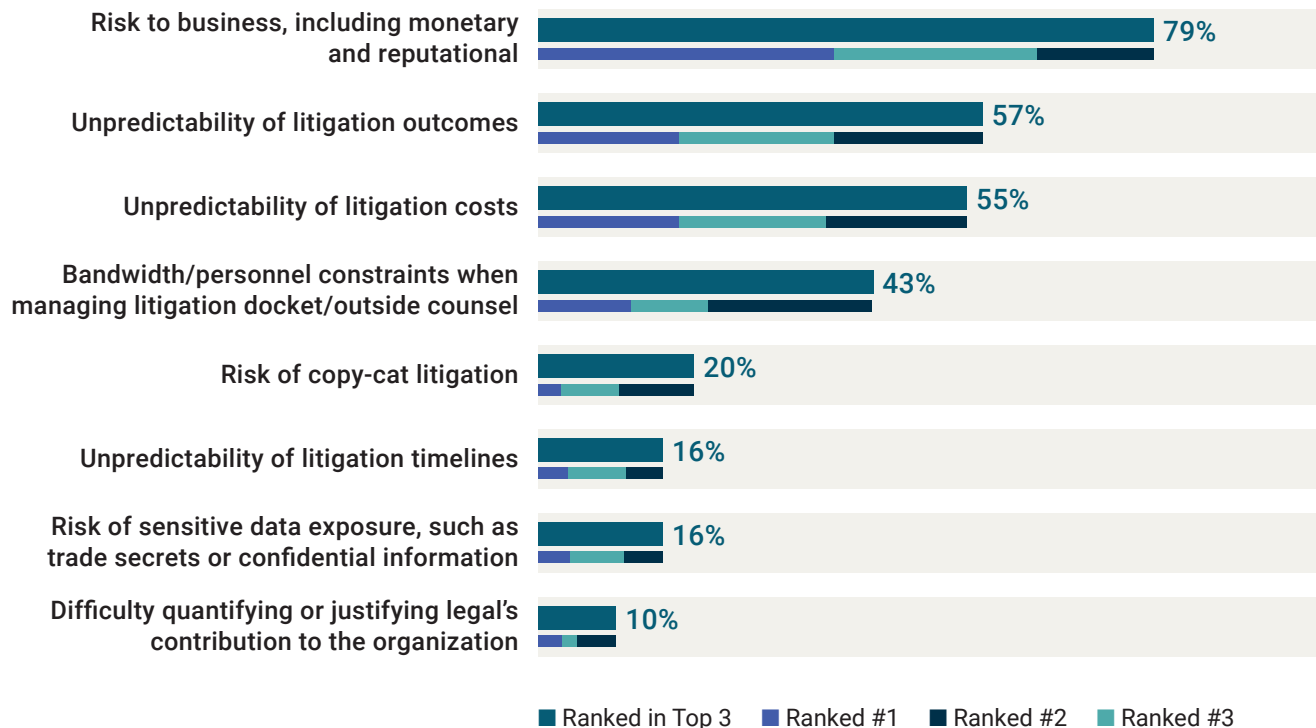
When faced with the decision to settle or move forward with litigation, legal departments overwhelmingly consider the overall costs of defending or prosecuting a matter as the main relevant factor, with 94 percent of participants selecting this type of cost as one of the three options permitted. Nearly two-thirds (64 percent) evaluate the reputational damage that may derive from litigation in order to decide to settle, and about half (49 percent) consider the potential business disruption cost.

What costs are your department considering when deciding whether to settle a matter? (Select up to 3 responses)



Respondents were then asked to identify the business challenges with respect to their department's litigation response process. Eight in ten departments consider the monetary and reputational risks to the business as the top challenges. A majority of participants also consider the unpredictability of litigation outcomes and the unpredictability of litigation-related costs as critical business challenges. Forty-three percent consider that bandwidth or personnel constraints when managing litigation as a challenge.

What are the business challenges with your department's litigation response process? (Please select 3 and rank MOST to LEAST challenging)



Note: Respondents had the opportunity to indicate other challenges, but none did.

70% of small companies (<US\$100M)
view unpredictability of litigation costs as
a business challenge, compared to just
49% of large companies (US\$1B+)



04

Litigation Trends



Legal departments provided insights on key trends in outside vendor usage and current litigation amounts, costs, and length. Furthermore, responses were also gathered on the most common types of litigation handled, how internal and external costs are divided, and the typical length of matters for different types of litigation.

Nearly all participants (97 percent) engaged at least one law firm for litigation work in the last 12 months, and 75 percent engaged at least one third-party vendor. A majority (51 percent) engaged a limited number of outside counsel firms (one to four), 21 percent engaged five to nine different firms, 16 percent did so with ten to 25 firms, and ten percent of participants engaged more than 25 different law firms for litigation purposes in the last year. Departments tend to engage fewer alternative, third-party vendors for litigation-related work.

PERCENTAGE THAT ENGAGED 1 TO 4 LAW FIRMS BY COMPANY SIZE



88% Less than US\$100M



67% US\$100M to US\$500M



52% US\$500M to US\$1B



26% More than US\$1B

Approximately how many outside law firms did your legal department use for litigation work in the past 12 months?



Approximately how many third-party vendors did your legal department use for litigation work in the past 12 months?



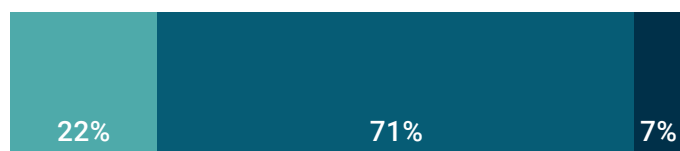
Did the following types of legal matters increase/decrease/stay the same from the previous year?



Litigations



Regulatory matters



Internal investigations

■ Increased ■ Stayed the same ■ Decreased

Most participants indicated that the overall number of legal matters remained the same this year compared to the year before. However, 31 percent reported a higher number of litigation matters, 27 percent saw an increase in regulatory matters, and 22 percent stated that the number of internal investigations had increased compared to the previous year. Only a minority of participants reported that the legal department handled fewer matters than the year before.

TOP 3 INDUSTRIES REPORTING AN INCREASE IN LITIGATION



67% #1: CONSTRUCTION



56% #2: BIOTECH/PHARMA



38% #3: FINANCIAL SERVICES



The cost of a typical litigation matter varies markedly across legal departments. Twenty-one percent reported that costs average less than US\$50,000, and another 27 percent reported that the typical cost of litigation ranges between US\$50,000 and US\$100,000. Seventeen percent reported spending between US\$100,000 and US\$150,000 on average to cover all litigation-related costs, nine percent spend typically US\$150,000 and US\$200,000, and one in four participants reported average costs of more than US\$200,000 for each litigation matter that the department handles.

Average litigation costs increase progressively along with company size. A plurality of 39 percent of organizations with a revenue under US\$100 million spend an average of less than US\$50,000 for each litigation matter while 33 percent of larger companies that exceed US\$1 billion spend more than US\$200,000 on average on litigation.

On a typical matter, what is the average cost of litigation (including outside litigation-related costs, such as counsel fees, production, deposition, investigation, and in-house litigation costs)?



TOP 3 INDUSTRIES
WITH HIGHEST LITIGATION COSTS
(% WITH US\$200K+ ON AVERAGE)



56%
BIOTECH/
PHARMA



50%
CONSTRUCTION



43%
ENERGY



Almost half of departments (46 percent) are observing that the average length of a typical litigation matter is increasing, with the same percentage reporting that they have observed no change. Only eight percent of respondents report that the typical litigation matter is decreasing in time.

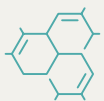
On average, the length of your typical litigation is...

INCREASING 46%

REMAINING THE SAME 46%

DECREASING 8%

TOP 3 INDUSTRIES WITH INCREASED AVERAGE LITIGATION TIME



88% BIOTECH/PHARMA



83% INSURANCE

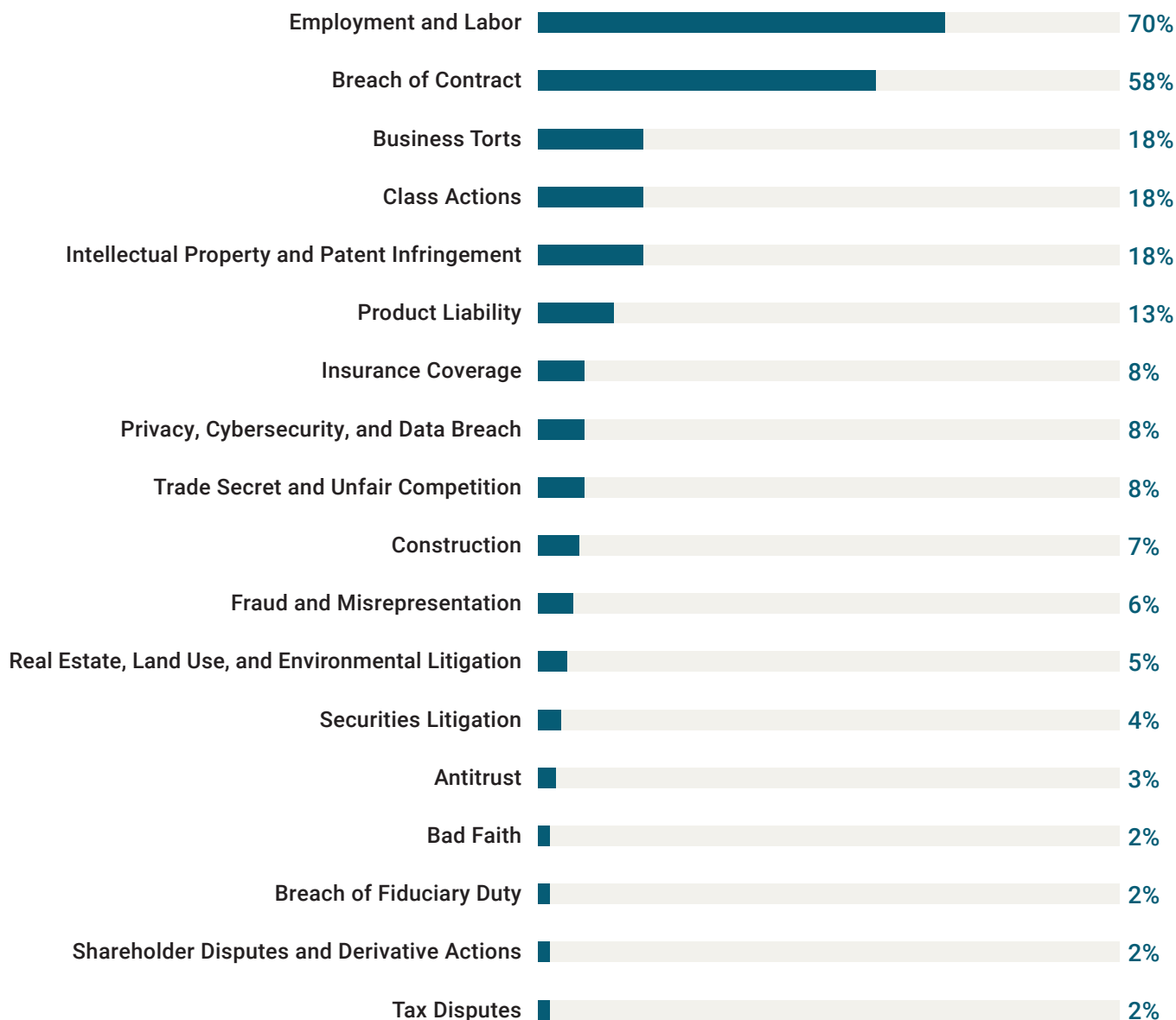


67% CONSTRUCTION



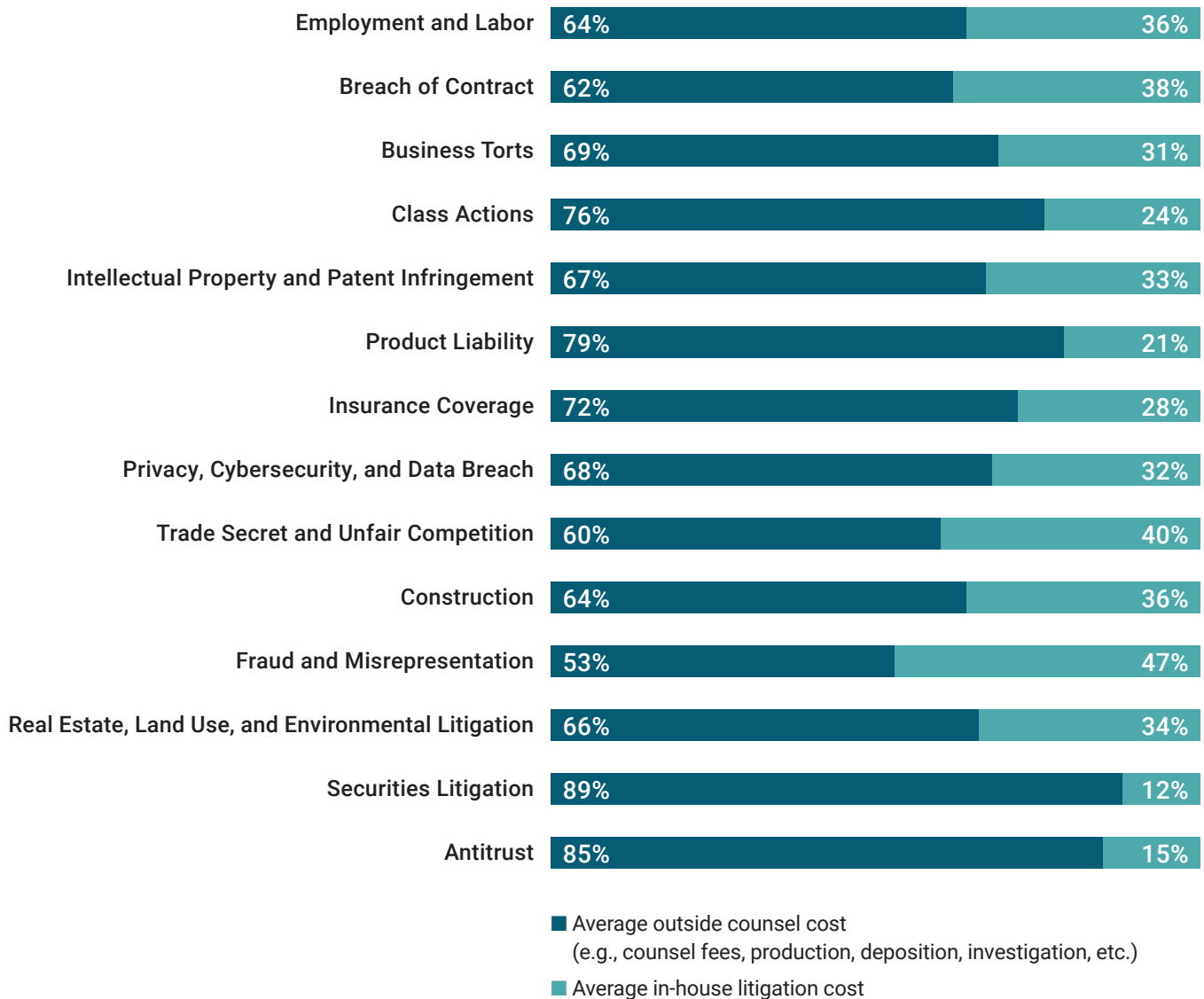
Participants were asked to report the three most common litigation types that their department handles from a list of 18 categories. By a long distance, the most common types are those related to employment and labor disputes (70 percent) and breaches of contract (58 percent). Litigation related to bad faith, breach of fiduciary duty, shareholder disputes, and tax disputes were among the least common.

Please select up to three of the most common litigation types that your department handles.



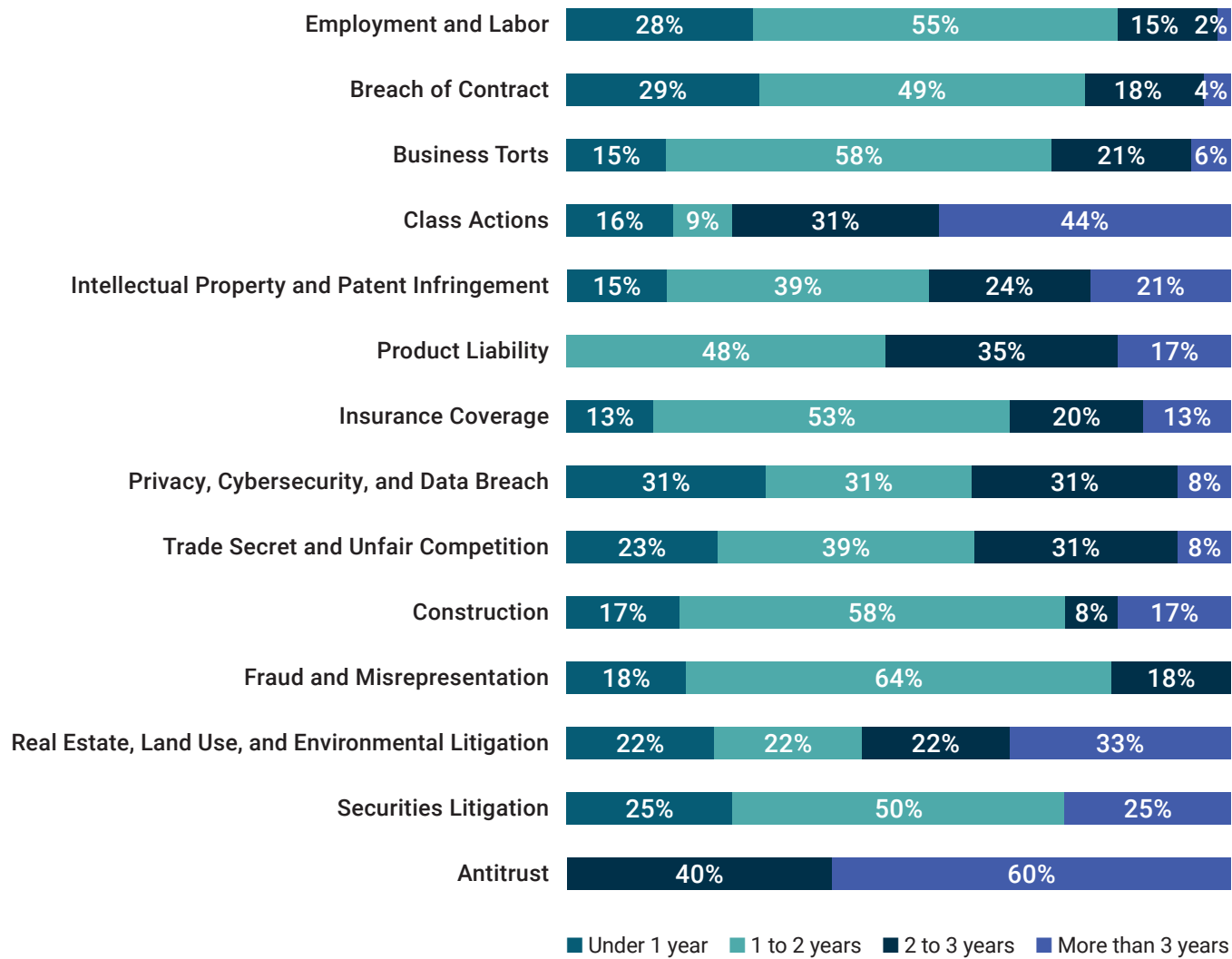
On average, outside counsel costs outweigh internal legal department expenses across all litigation types. Litigation matters related to securities and antitrust issues are mostly covered by outside counsel expenses, with an average of 89 percent and 85 percent of litigation costs, respectively. At least 70 percent of litigation expenses are allocated to outside counsel in matters related to product liability (79 percent), class actions (76 percent), and insurance coverage (72 percent). On the other end, fraud and misrepresentation litigation costs are rather evenly split, with 53 percent of the cost allocated to outside counsel and 47 percent allocated to in-house legal departments, on average. For the two most common litigation types, employment and labor, and breach of contract, 64 percent and 62 percent of expenses, respectively, are allocated to outside counsel providers.

How is the cost for the legal matter split between in-house and outside counsel?



Note: Only results for litigation types selected by five participants or more are reported.

How long does the litigation typically last?



Note: Only results for litigation types selected by five participants or more are reported.



Departments reported on the amount of time that a typical litigation matter lasts, based on participants' experience with the most common three litigation types that their department handles. There is wide variation across litigation types. On average, 83 percent of participants reported that employment and labor litigation lasts under two years, 82 percent reported the same length for fraud and misrepresentation, and 78 percent indicated this same average length for matters related to breaches of contract.

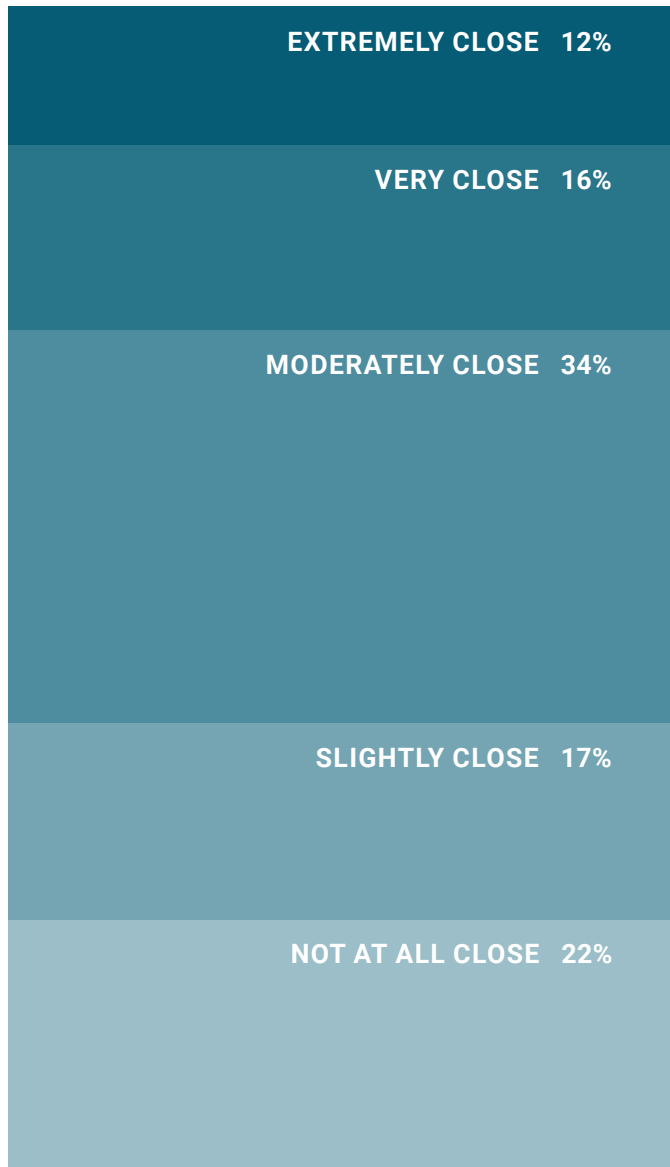
On the other hand, class action lawsuits last the longest, according to 75 percent of participants that reported an average length of two or more years – with 44 percent indicating an average of three years or more. A majority of those that typically handle real estate, land use, and environmental litigation reported an average length exceeding two years, as well as 52 percent of participants that reported this length for litigation related to product liability issues.



05

Technology and Cross- Functional Collaboration

How closely does your department work with your company's CIO to help support your legal technology needs this year?

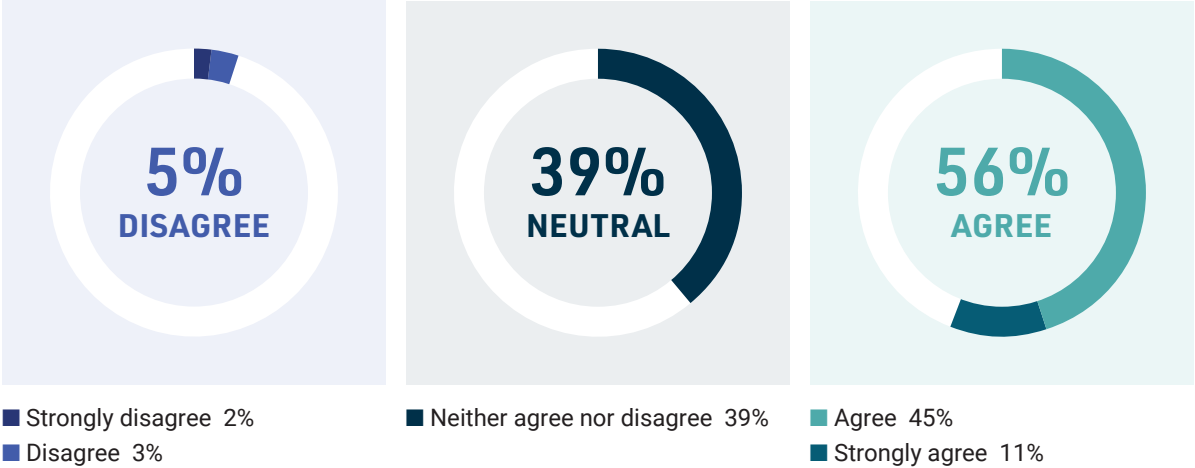


This final section explores insights on technology support and intra-departmental collaboration to support legal work in general and litigation-related processes, in particular.

A majority of participants (62 percent) reported that the legal department works at least “moderately closely” with the company’s chief information officer (CIO) to support the legal technology needs of the business. Twelve percent of participants stated that this working relationship is “extremely close,” and another 16 percent said that the department works “very closely” with the CIO. Therefore, more than one in four legal departments has a very strong relationship with IT to assist with legal technology needs. One in five admitted that the relationship between legal and the CIO is “not at all close.”

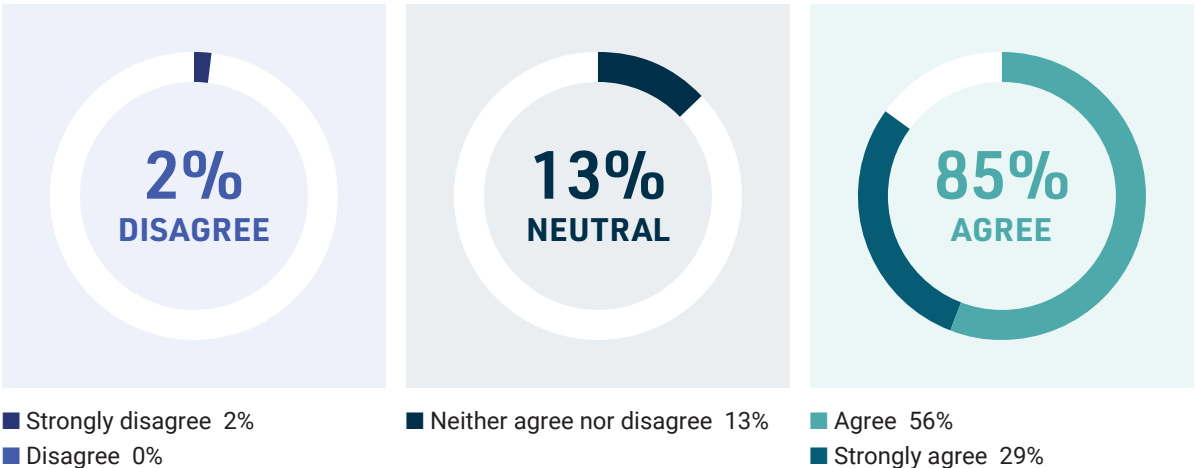
Most participants anticipate that the need for stronger collaboration between the legal and IT teams will grow in the near future, with 45 percent agreeing on the need for stronger collaboration and 11 percent reporting that they “strongly agreed” with the prospect of enhanced collaboration between the legal department and the CIO. Almost four in ten participants had a neutral position on the matter, and just five percent do not believe that the need to work more closely with the company’s CIO will grow in the coming year.

Do you anticipate those needs to grow in a year from now?



The perception that in-house counsel and other legal professionals need to be familiar with technology and how it can support legal work is growing. A solid majority of 85 percent either “agree” (56 percent) or “strongly agree” (29 percent) with the need for in-house legal professionals to understand the critical role that technology plays in today’s legal department. Thirteen percent “neither agreed nor disagreed” with this statement, and only two percent of participants “strongly” disagreed.

Increasingly, in-house legal professionals need to understand new technology and its impact to legal work and operations.

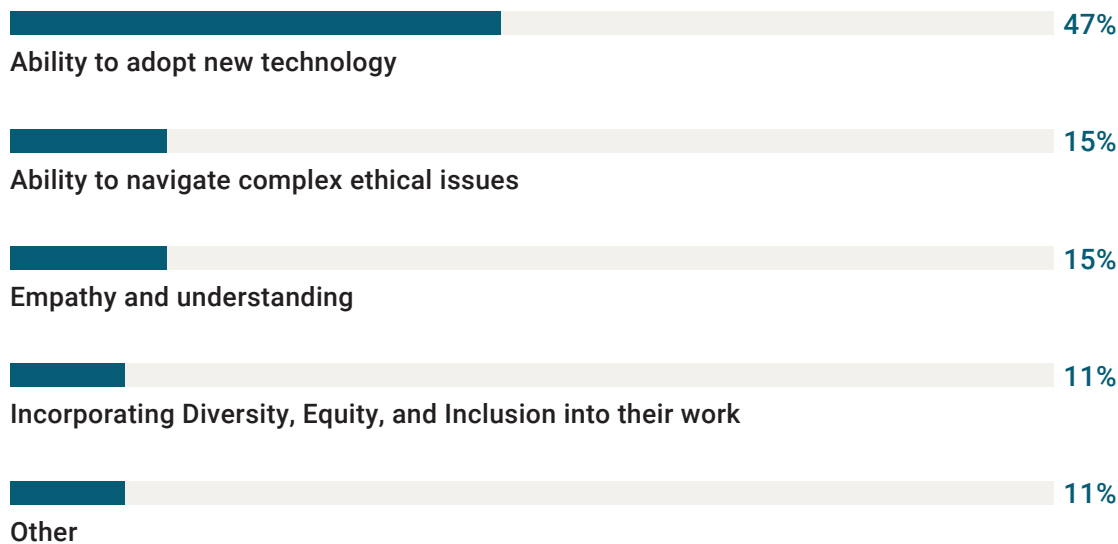


94% of those in large (US\$1B+) organizations agree compared to 77% in small (<US\$100M) companies

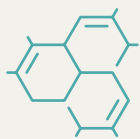
On top of the strong agreement of the need for in-house professionals to understand the technology environment in the legal field, almost half of participants (47 percent) believe that the ability to adopt and use new technologies is the most critical skill for the next generation of in-house lawyers. This result is three times larger than those participants who advocated instead for in-house professionals to master the ability to navigate complex ethical issues (15 percent) and empathy and understanding (also 15 percent).

Eleven percent pointed to the need to incorporate diversity, equity, and inclusion (DEI) into their legal work, and another 11 percent indicated other additional non-legal skills that the next generation of in-house professionals should consider adding to their skillset, including communication skills and a solid understanding of the business.

Beyond legal skills, what skill is the most critical for the next generation of in-house legal professionals?



TOP 3 INDUSTRIES THAT EMPHASIZE FOCUS ON ABILITY TO ADOPT NEW TECHNOLOGY



75%
BIOTECH/
PHARMA

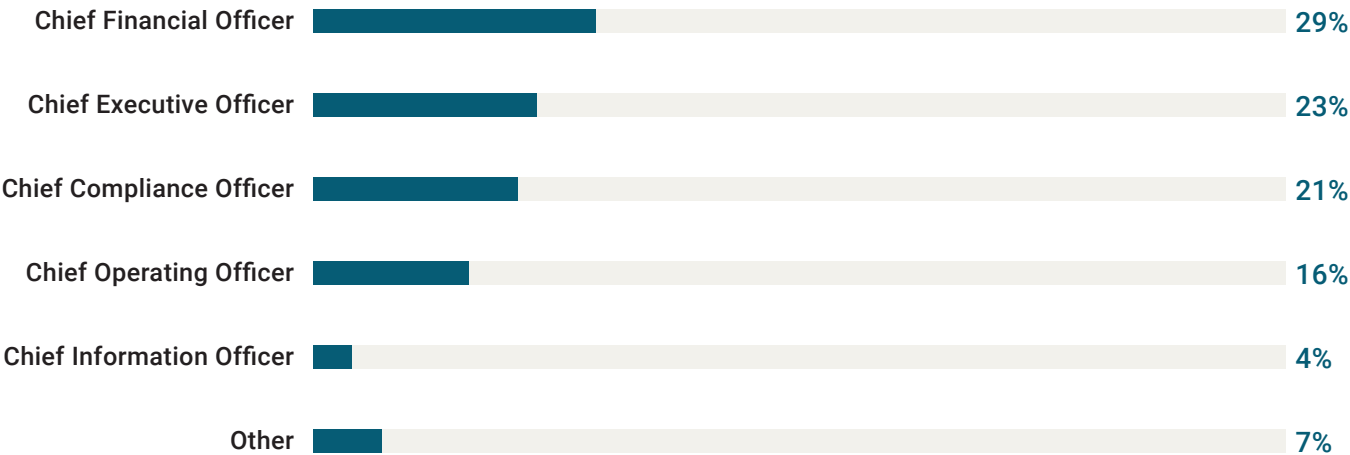


67%
FOOD/
BEVERAGE



61%
TECHNOLOGY

What C-Level office does your department work most closely with?



CLOSEST C-LEVEL RELATIONSHIP OF THE LEGAL DEPARTMENT BY COMPANY SIZE



CEO 45% Less than US\$100M



CEO 37% US\$100M to US\$500M



CFO 36% US\$500M to US\$1B

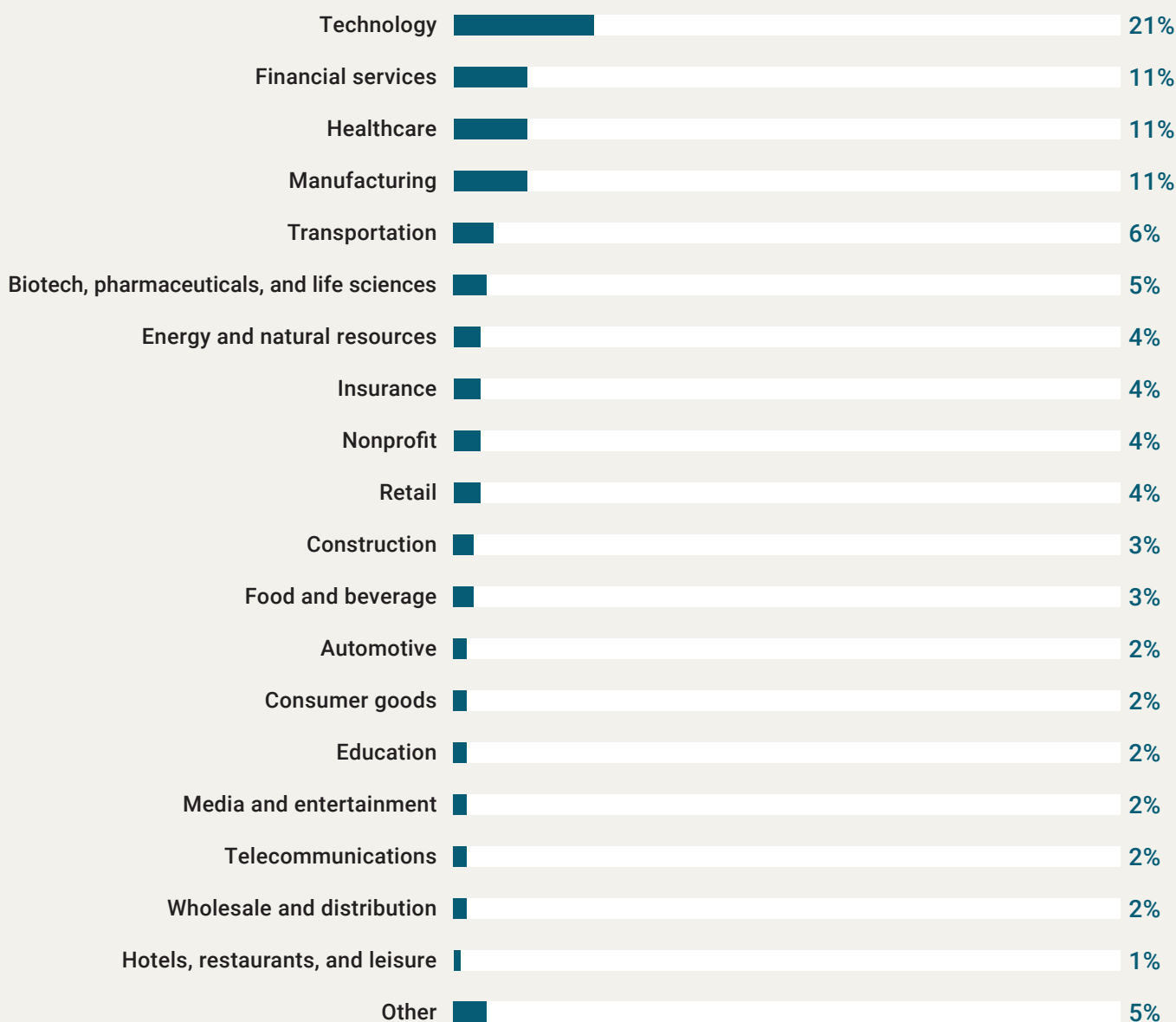


CCO 35% More than US\$1B

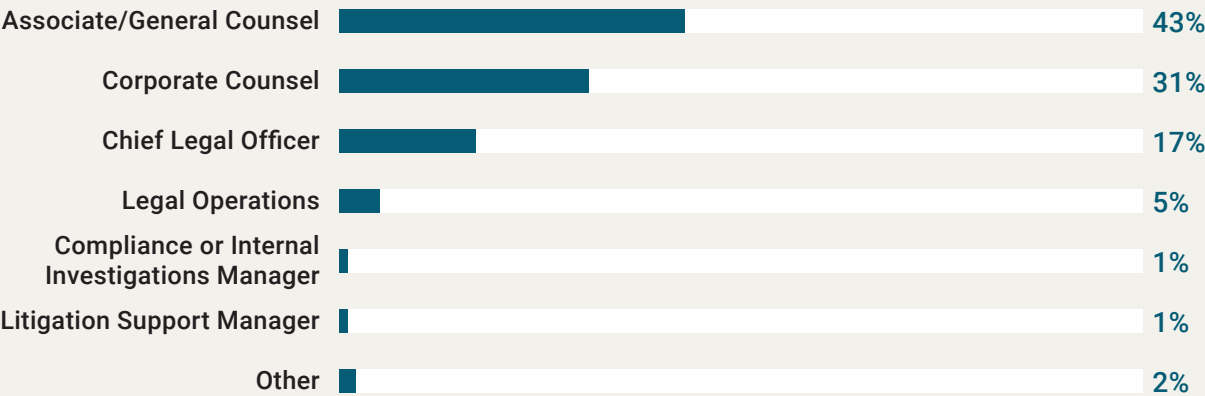
Lastly, participants reported on the C-level officer that the legal department works most closely with. Despite a majority reporting a moderately close relationship with the company's CIO in a previous question, just four percent indicated that legal works the closest with the chief information officer. The most common collaboration for participating departments is with the chief financial officer (29 percent), followed by the chief executive officer (23 percent), the chief compliance officer (21 percent), and the chief operating officer (16 percent). Seven percent of departments work most closely with yet another C-level executive, such as the chief administrative officer and the chief human resources officer.

PARTICIPANT PROFILE

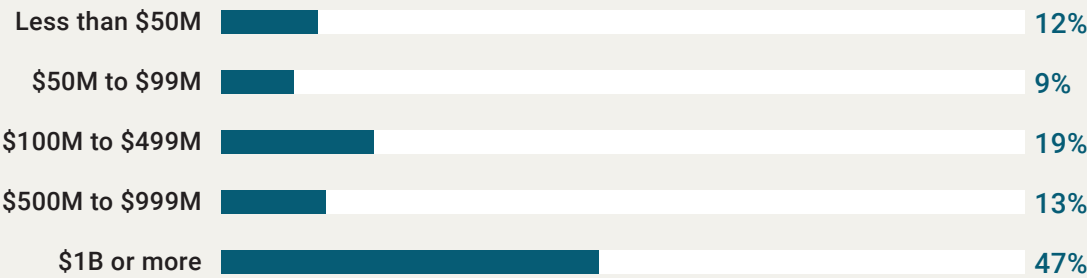
Industry



Position

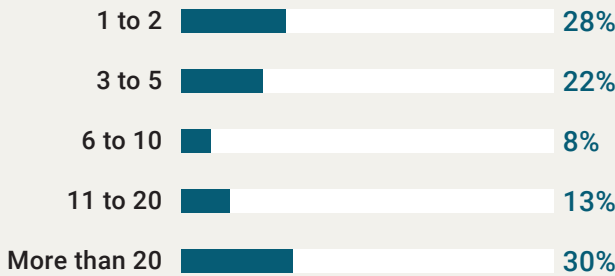


Revenue

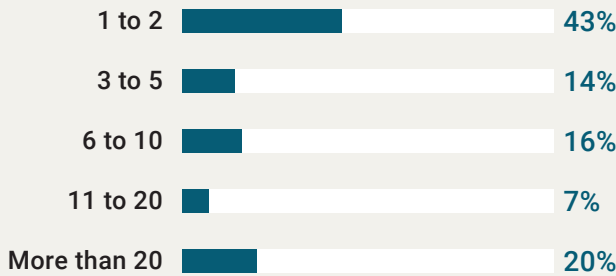


Legal Staff

LAWYERS



NON-LAWYERS



SURVEY DETAILS

SURVEY INSTRUMENT

The survey questionnaire was offered through an online survey platform. Personalized survey links were sent by email to the target population, which allowed participants to save their responses and fill out the questionnaire in more than one sitting, if needed.

FIELDING PERIOD

The survey opened on June 22, 2022, and closed on July 15, 2022. Reminder emails were sent weekly.

TARGET POPULATION

We targeted ACC members located in the United States.

PARTICIPATION

A total of 202 in-house counsel and legal operations professionals participated in the survey.

ANONYMITY

Survey responses were completely anonymous. No information is linked in any way to an individual respondent. The results are provided only at the aggregate level.

DATA ACCURACY

Not all respondents answered all questions. The percentages provided are based on the number of valid responses received for each individual question. Many survey questions offered the opportunity to select multiple response options. In those cases, percentages may not total to 100 percent.

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