

COWORKING LAW

WHAT IS IT?

Coworking law is a catch all for the unique legal issues spawned by the increasing popularity of co-working spaces. Co-working spaces are defined as membership-based workspaces where diverse groups of professionals work together in a shared, communal office facility. Coworking has two variants - hoteling - an office without assigned desks/offices, instead offering a reservation-based style where employees schedule for workspaces on an as-needed basis and coworkation, which caters to location-independent professionals referred to as “digital nomads” that travel from one space to another all over the globe (think short-term ex-pat).

Co-working law encompasses the unique legal issues - from real estate and insurance to discrimination - that emerge as coworking increases in popularity - with a need for legal services both to facilities that seek to offer coworking space, and tenants who use the space. Co-working spaces for lawyers also raise unique ethics issues.

WHY NOW?

Following the global financial crisis of 2008-2009, there was a boom of co-working spaces throughout the country, especially in large and mid-size cities due to the evolving nature of work in the modern

world. Today, co-working spaces are not just for freelancers and solo-preneurs; companies may lease space for telecommuters or set up shop within a coworking space. The statistics confirm the trend: In 2014, Inc. Magazine reported there was 83% growth in the number of co-working spaces, with memberships increasing by 117% between 2012 and 2013.

KEY LEGAL ISSUES:

Building Ownership - A tenant is granted exclusive rights to a defined space in a commercial building, together with legal protections against eviction. Members of a co-working space are not afforded these same types of protections, and the fact is smaller, local co-working businesses come and go, leaving their members “officeless.” Members must recognize that the building owner may be a separate entity from the co-working company, and should ask to review the lease. By way of example, in 2014, Hudson Pacific Properties (HPP) sued Real Office Centers (ROC) for unpermitted use of a terrace (which was considered a landmark of big parties in the region’s booming tech industry over the last 5 years), and the parties settled with a new 10-year lease in place, but without the revenue from the terrace parties, together with the cost to remedy building violations (like an unpermitted audio-recording studio and ADA non-compliant bathrooms), ROC could not pay its rent and

HPP filed for eviction in May 2017. See also, e.g., *Frick Lender Assocs. v. Coterie* (Ct. Com. Pl., Allegheny Co.), a lawsuit filed on July 7, 2017, seeking \$220,000.00 in past-due rent and eviction of the woman's only co-working space from downtown Pittsburgh.

Insurance - An employee enjoys many insurance benefits through its employer, such as office coverage, E&O coverage, cyber liability and worker's compensation. Similar to the landlord-tenant eviction protections, a landlord would have liability insurance for personal injury and property damage to a tenant; however, these protections are not necessarily in place in a co-working space. A co-working member must make sure that his/her equipment is covered from physical or cyber theft, and should check that the co-working company has adequate liability insurance or if separate insurance should be maintained.

Data Security & Privacy - Co-working members must take reasonable steps to ensure cyber security and encryption features are used to protect the transfer of online data, which security features may not be offered through the co-working space. In addition, there are concerns with ensuring privacy protections of personal client information.

Alcohol Use - Co-working spaces are designed to be relaxed, inspiring and fun, and many offer alcohol as a perk (or beer pong for

recreation rooms). However, there is no employer to enforce the appropriate time and/or amount of alcohol use; discipline anyone for excessive alcohol use; or mediate the uncomfortable situations that can follow (especially for those in a combined living/co-working space).

Sexual Harassment or Discrimination: Because co-working business are not employers of its members (as opposed to its role as an employer for those who run the business), there is currently no set obligation or legal responsibilities to supervise, investigate and discipline its members for any unwelcome harassing or retaliatory behavior. Nevertheless, it is recommended that co-working spaces have and enforce sexual harassment policies.

Miscellaneous: Coworking facilities also give rise to the sorts of run of the mill business issues encountered by any office facility. As mentioned in the ROC and Coterie cases, *supra*, there are landlord-tenant disputes between the businesses and building owners. In Austin, Texas, co-working space Capital Factory is claiming trademark infringement and poaching of employees and customers against the newly formed atx Factory. See *Cap. Factory Mgmt., LLC v. ATX Factory, LLC*, Case No.: 1:17-cv-00797-LY (W.D. Tx.) filed on August 16, 2017.

Future Trends & Opportunities: As workers are much more transient, co-working spaces are a natural development to balance human interaction with the online work world. As co-working spaces grow further and begin offering benefits to users of the space, issues will continue to evolve.

Bonus: Coworking And Ethics Considerations For Lawyers: Co-working spaces for lawyers may raise unique ethics considerations.. There are some companies tailored to attorney-only co-working spaces, and, even, local bar associations are offering spaces to new attorneys, solo practitioners and small firms to conduct work away from home. However, lawyers must be cognizant to take extra precautions to prevent any potential problems.

Confidentiality (Model Rule 1.6): Lawyers must ensure client confidentiality by separating client files as well as taking care that the emails and any communications with the client are solely between attorney and client. While there is an open layout, and trusting, collaborative spirit to the whole co-working paradigm, lawyers must be able to speak in person or on the phone with their clients in a private, quiet place (which also safeguards the attorney-client privilege, especially in terms of litigation or other court matters). It may be an overlooked privilege, but attorneys typically enjoy being able to leave their confidential documents or written communications when moving about their law firm; this evaporates in the co-working space. A lawyer cannot leave confidential information accessible, and concerns are, for example: documents on the table or open on the computer when unattended (even when just getting a coffee); using the wireless printing station (can someone else take it or reprint it?) or accidentally leaving pages behind in the printing station; using the shared fax system (should be using electronic fax services); or the security of the shared wireless network in sending and receiving emails.

Conflicts of Interest (Model Rule 1.7): It is imperative to know the other business (and lawyers) in one's co-working space, to avoid any potential conflicts of interest or the appearance of impropriety. What if you are unknowingly talking to opposing counsel? What if you are listening to a co-working member's story, and somehow learn inside information to one of your established cases or, possibly, a future case (and thereby, prohibited from representing future client).

Fee Splitting and Referrals with Lawyers and Non-Lawyers (Model Rules 1.5 and 5.4): For attorneys, networking and referrals through a co-working space can be considerable; attorneys benefit greatly from mixing with their co-workers (whether other attorneys or not). However, expectations of referrals must be clearly delineated and any fee splitting arrangements must be in writing, and clients must be informed.

Partnership or Not (Model Rule 7.2 and 7.5): A lawyer cannot state or imply that they practice in a partnership or other organization unless it is a fact. Co-workers are simply not associates or partners. References to your co-working space or other lawyer members in your space on your website, in ads or blogs may imply connections or associations in violation of these rules. Conversely, if you are so associated or connected with other lawyers (or ethically connected with non-lawyers), clients need to be informed in writing of the same.

Safekeeping Fiduciary Duties (Model Rule 1.15): As a lawyer in an open space that is filled with other members, one must ensure that clients' property (especially money) is secure, and not accessible to others.

Bonafide Office Space Requirements - Some states still have bonafide office requirements (See Lawyerist at <https://lawyerist.com/states-require-bona-fide-office/>) (listing each state's requirements) and depending upon jurisdiction, coworking spaces may or may not comply. Lawyers who intend to use coworking space as primary space should consult the their local ethics rules.

CRAFT ALCOHOL

WHAT IS IT?

The term “craft” as applied to beer, spirits, cider and wine (collectively referenced as craft alcohol) is generally understood to refer to a product that is produced in small quantities by small independent or home-based breweries or distilleries that employ high-quality, natural and local resources in production. See e.g., [Brewers Association](#) (definition characteristics of craft beer), [American Distillers Institute](#). Because of the heavily regulated nature of the alcohol industry, the legal issues applicable to craft beer, wine or spirits are wide-ranging -- from ordinary business issues (such as incorporation or trademark) to those unique to sale, advertising and regulation of alcohol.

WHY NOW?

In large part, the demand for craft beer and distilleries has been fueled by the growing trend of buying local. Social media -- which may be used by the craft beer and spirits industry, [subject to some restrictions](#) -- (e.g., ensuring that platform is primarily used by adults) has also enabled local companies to cultivate loyal fans who eagerly to share their discovery of a new brand with their friends.

[Other sources](#) claim that increased interest in craft beverages flows from pop culture with shows like Mad Men reviving interest in bourbon. The numbers confirm that craft industries are on an upward trajectory: in 2016, the retail dollar value of the craft beer market was estimated at \$23.5 billion and accounts for nearly 22 percent of the overall beer market, according to the [Brewers' Association](#). [Fortune](#) reports that craft distilleries are the next big thing, with \$2.4 billion in retail sales in 2015 and commanding 2.2% of the market, up from just 0.8 percent in 2010.

KEY LEGAL ISSUES:

Corporate Issues - Like any businesses, craft alcohol producers or sellers must deal with the same kinds of issues as any other business: corporate formation, zoning law, IP protection and taxation. Two issues warrant special mention: trade secret protection, which has become a source of [concern](#) and [litigation](#) as the industry becomes more competitive and b-corporation status (See Social Entrepreneurship) which has gained popularity with many craft companies that are often operated as sustainable and social-minded enterprises. See e.g., [B-Corporation-net](#) (listing 88 craft beer companies as b-corporations).