Advising Clients Amid Economic Uncertainty in 2026: A Practical Guide for California Lawyers

California lawyers are heading into 2026 against a backdrop of economic uncertainty. On the surface, the warning signs are familiar, including rising bankruptcy filings, pressure on commercial real estate and workforce reductions. However, the way legal risk manifests, spreads and is enforced looks different from past downturns. For practitioners advising businesses, employers and lenders, navigating the coming year is less about predicting a recession and more about being prepared for how instability can ripple across practice areas.

"Risk analysis will dominate legal counseling over the next year as everyone looks to avoid a fall in a potentially volatile economy," said David Muellenhoff, a CEB content attorney and a longtime in-house and business lawyer who has practiced through multiple economic cycles, including the dot-com crash and the 2008 financial crisis. "In past economic downturns, the shift has put pressure on contracts, employment decisions and business structures. Lawyers are often helping clients decide how much risk they can tolerate, not just what the law technically allows."

Personal and business bankruptcy filings increased more than 10% in the last year, signaling a growing strain on small businesses, consumers and lenders. Filings under Subchapter V of the Bankruptcy Code, a streamlined federal program designed to help small businesses reorganize, have reached record levels, with thousands of individuals and closely held companies seeking faster, lower-cost relief from mounting debt.

Historically, bankruptcy filings often precede spikes in foreclosures, commercial loan defaults and employment disputes as businesses restructure, contract or fail altogether. For California lawyers, particularly those advising businesses, employers, lenders and real estate stakeholders, these signals point to a year in which legal risk is likely to surface earlier and escalate faster than in more stable economic cycles.

In an economy marked by volatility, clients are increasingly turning to counsel not just for legal answers, but for risk-based judgment, such as how far to push, when to restructure and how to protect core operations before financial pressure turns into litigation.

"Risk analysis will dominate legal counseling over the next year as everyone looks to avoid a fall in a potentially volatile economy."

Economic downturn amplifies litigation risk in California

Economic slowdowns tend to expose legal weaknesses that were previously tolerated or overlooked. In California, where consumer protection statutes, privacy laws and employment regulations are among the most expansive in the country, those weak spots can quickly turn into lawsuits.

One area of particular concern is the marketing and communications sector. Telephone Consumer Protection Act (TCPA) litigation, for example, has long posed a significant risk to businesses that interact directly with consumers. During downturns, even minor technicalities, such as telemarketing practices, accessibility issues and advertising disclosures, are more likely to be scrutinized through class actions that can carry significant statutory damages.

Recent U.S. Supreme Court decisions have also added uncertainty to the TCPA landscape, allowing district courts to independently evaluate agency interpretations that businesses once relied on for guidance. As a result, conduct that was previously deemed compliant can now be challenged.

"Missteps in marketing or data practices are rarely met with warnings. They're met with lawsuits," Muellenhoff said. "That's why it's critical that companies and their counsel are vigilant in these times to every detail of their marketing and advertising plans."

Privacy compliance presents similar challenges. California's privacy regulations touch nearly every business that collects, stores or shares customer data. When companies are under financial pressure, they may move faster or change marketing strategies without fully considering the legal consequences. It's crucial to remind clients that slowing down to review materials thoroughly could save thousands, if not millions, in the long run. At the same time, as federal enforcement activity becomes less predictable, state regulators and private lawsuits are increasingly driving enforcement.

For litigators and corporate lawyers, this environment underscores the importance of clear documentation, arm's-length business relationships and anticipating how private litigation can trigger broader regulatory scrutiny.

Employment law pressure points expected to multiply

Unemployment rates are creeping higher and expected to peak in early 2026 before beginning to fall. In an uncertain economy, however, those projections can change quickly, and employment law issues tend to follow closely behind. Layoffs, reorganizations and cost-cutting measures create fertile ground for wrongful termination, wage-and-hour and discrimination claims, particularly in California, where **employee protections** are robust and enforcement mechanisms are well developed.

"Termination decisions are among the highest-risk actions a company can take during a downturn," Muellenhoff said. "They're often made quickly, under financial pressure and without full consideration of what could come next."

Employment complaints also tend to attract regulatory attention, expanding risk beyond individual disputes. Recent **changes to California's WARN Act requirements** did not alter when notice is required, but they did increase what employers must include in those notices, creating additional compliance risk.

"Termination decisions are among the highest-risk actions a company can take during a downturn."

Employers are now required to provide the following in their 60-day Cal-WARN notice:

- Statement of coordination services
- Local workforce development board information
- CalFresh program information
- Employer contact information

Businesses that actively plan reductions-in-force (RIF) or restructurings often ask counsel to manage employment issues end-to-end. This will help them defend any potential claims and navigate agency investigations. Law firms that can integrate **employment discipline and termination advice** with broader business counseling will be better positioned to serve clients facing complex, high-stakes decisions.

Insurance coverage is often overlooked, yet critical to risk management. **Employment practices liability insurance (EPLI), directors and officers** (D&O) coverage and wage-and-hour endorsements can materially affect how termination disputes, WARN claims and discrimination allegations are defended and resolved. Counsel should encourage clients to review coverage, exclusions and notice requirements before layoffs or restructurings happen — not after a claim is filed.

Bankruptcy: Where missed legal fixes collide

Bankruptcy is not where financial distress begins, but it is often where legal consequences become unavoidable. Many businesses enter bankruptcy because earlier opportunities to renegotiate contracts, enforce security interests or restructure obligations were missed.

Entity formation and contract design play a critical role long before insolvency becomes unavoidable. How affiliated businesses are formed, how assets and liabilities are allocated, and whether operations are properly separated can determine whether distress in one line of business cascades into others. Inadequate separation between entities, poorly drafted intercompany agreements or informal operational overlap can expose otherwise healthy businesses to creditor claims when a related entity falters.

"As in-house counsel, a lot of my job was figuring out how to protect the core business when we wanted to take on something risky," Muellenhoff said. "That meant thinking carefully about what form of entity we used, how contracts were structured and how clearly we documented that different businesses were operating at arm's length."

Beyond business entities, contract language can make a big difference in how much room a business has to maneuver when finances tighten. Specific provisions can cause problems to snowball. For example, language that allows a missed payment or breach in one agreement, or by one affiliated entity, to trigger defaults across multiple contracts. Agreements between related companies are especially vulnerable if they were handled informally, lack clear documentation or don't reflect arm's-length terms. When financial stress hits, those agreements are often the first items creditors or opposing counsel examine. Lawyers who identify these issues early can help clients renegotiate key terms, maintain flexibility and keep trouble in one part of the business from dragging down the rest.

Economy stresses real estate transactions

Rising bankruptcy filings are often an early indicator of stress in commercial real estate and lending markets. Historically, increases in bankruptcies precede foreclosures and distressed real estate transactions, particularly in sectors with high leverage or declining demand.

For real estate and finance attorneys, the next six to 12 months are likely to bring an increase in loan workouts, foreclosures and commercial lease renegotiations. During downturns, tenants often gain leverage as landlords become more flexible in filling vacancies and stabilizing cash flow.

Secured transactions under the **Uniform Commercial Code** (UCC), particularly **Article 9**, govern the rights of creditors in personal property long before bankruptcy is ever filed.

"It's critical for attorneys to understand UCC priorities and remedies as bankruptcy often follows secured-transaction failures," Muellenhoff said.

Misunderstanding these rules can expose clients to significant losses or missed opportunities to protect their interests. The way financing documents and security agreements are drafted early on often determines who has options later. For practitioners, this is a reminder to revisit secured transaction basics and proactively advise clients on **how to structure** financing arrangements to withstand economic stress.

Law firm risk rises alongside client risk

Economic downturns increase risk not just for clients but for law firms. As distressed businesses seek help, attorneys are more likely to face rushed engagements, unclear scopes of work and pressure to advise outside their usual practice areas. Quick conversations and loosely defined advice can later turn into malpractice claims or fee disputes.

Firms should take a hard look at their own intake practices, especially when stepping into outside general counsel roles or advising struggling businesses. This includes clearly defining what you are and are not advising on, documenting risk discussions and knowing when to engage specialized counsel.

Preparing for what comes next

With Economic uncertainty, there's no telling exactly what the legal landscape will look like in California a year from now, but it will likely involve more litigation, heightened scrutiny and greater demand for attorneys who can serve as strategic advisors. Past downturns offer a clear lesson: economic stress exposes weak structures, unclear contracts and rushed employment decisions.

For California practitioners, preparation is the difference between managing risk and reacting to it. This looks like:

- **Stress-checking business structures** to confirm that affiliated entities are properly formed, documented and insulated from one another
- **Auditing core contracts** for provisions that could amplify financial distress, including cross-defaults, guarantees and informal intercompany arrangements
- **Strengthening employment processes** around terminations, RIFs and WARN compliance, where mistakes carry more risk during challenging financial times
- **Evaluating insurance coverage early** to understand how disputes will be defended and funded if claims arise.
- **Reviewing marketing, privacy and data practices** that may draw scrutiny from plaintiffs or state regulators as enforcement priorities shift
- **Applying stricter client-intake discipline** within the firm, clarifying scope, documenting risk discussions and identifying matters that require referral or co-counsel
- **Positioning your practice to meet demand** by building fluency across adjacent disciplines that clients will need in a volatile environment

For plaintiff attorneys, economic instability brings a different set of opportunities and risks. Financial stress can surface wage-and-hour violations, wrongful termination claims, consumer-protection issues and privacy failures that often go unchallenged in stronger markets. Effective plaintiff representation depends on understanding how business structures, contracts and compliance breakdowns fit together, especially when liability turns on technical requirements or missing paperwork.

CEB's California-specific resources are designed to support lawyers navigating these challenges, with practical guidance across business law, employment, real estate, privacy and litigation. From secured transactions and WARN Act compliance to business formation workflows and contract drafting tools, CEB helps attorneys anticipate issues and respond with confidence.

To explore how CEB can support your practice in 2026, sign up for a free trial.

CEB

Contact us at 1-800-232-3444 or visit us online to learn more.