Avoid These 4 Rage-Inducing Redline Faux Pas for More Efficient Contract Negotiations

Technology, Privacy, and eCommerce

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We've all heard about drivers succumbing to "road rage" when another driver cuts them off in traffic. Corporate lawyers and contracts professionals also know about "redline rage" — a peeved and aggrieved feeling you get when others fail to use redlines appropriately during contract negotiations.

In her new book, *Contract Redlining Etiquette*™, in-house attorney and founder of the Contract Nerds blog, Nada Alnajafi, describes several ways we can solve redline rage.

"Believe it or not, redlining doesn't have to be a headache. When done correctly, it can actually be fun. Imagine a world where people stop hiding changes and sending unnecessary markups. Redlining becomes a conversation — a negotiation." Alnajafi refers to this as, "smarter redlining."

Contract Redlining Etiquette is the first and only uniform set of rules and best practices around contract redlining. It is required reading for anyone who wants to redline more effectively for fewer negotiation conflicts and clearer contracts. Plus, according to negotiation expert Kwame Christian, this book is "a must-read for anybody looking to develop a major competitive advantage. There is no other book that can give you tools focused specifically on redlining contracts."

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With these tips, we can learn to stop redline rage for our sanity, but also for better and more efficient contract negotiations. Let's explore four redline rage-inducing faux pas, how to solve them through smarter redlining practices, and then look at how technology can help us to prevent them in the first place.

Faux Pas #1: Sending Redlines via PDF

I can almost hear the collective groans now. The read-only aspect of PDF redlines is probably the biggest driver of redline rage.

The contract reviewer uses track changes to redline their suggestions but sends them to you in a static PDF or locked document. Or the reviewer uses lock tracking in MS Word to prevent you from making changes to the document. Both of these actions communicate the not-so-subtle message that you are not invited to redline the document. (Not a very good starting point for commercial relationships that are dependent upon trust and cohesion.)

In either case, you just get a frustrating, read-only document. You're left to either accept the document as-is or manually track changes during the negotiation and replicate everyone's efforts when you incorporate the agreed-upon revisions into the final contract. Neither of these options are efficient and can waste a lot of valuable time that could otherwise be spent in substantive negotiations.

Always send redlines in an editable format

According to Alnajafi, "Contracts should be exchanged in an editable electronic format. Choosing the wrong document format will only delay the contract redlining and negotiation process."

The reality is that if someone really wants to change a document, they can and they will. With so many advancements in technology and more tech-savvy contract experts, we've become more aware of easy workarounds, such as:

- Converting PDFs to Word through a free online conversion program
- Copy/pasting the text into a new, unlocked document
- Printing out the document, re-scanning it through a PDF scanner, then converting it to Word

The problem is that these workarounds take time. And time, is not on the contract reviewer's side. What's an even better way to prevent this problem?

Technology tools to avoid PDF pains

Rule #10 of C*ontract Redlining Etiquette* is to incorporate technology to assist with smarter redlining.

Start by using contract negotiation software to reduce the need for so many redlines to begin with. Contract templates and clause libraries use standardized language that promotes consistency and accuracy. Contract drafters make far fewer mistakes when they don't have to create every contract from scratch.

This won’t eliminate the need for every redline. But we can do away with PDF redlines forever with software that brings parties together to collaborate on the same document in a shared online environment.

With contracting technology, negotiators can interact through an open discussion board to discover and solve issues live in real time and in a conversational fashion. The software maintains a permanent record of every comment, edit, action taken and then synchronizes accepted revisions into a final contract.

Faux Pas #2: Revealing internal redlines to external parties

Contract reviewers typically use “external redlines” for a counterparty’s business or legal representatives to review, accept, or respond to. In her book, Alnajafi explains that “internal redlines,” are redlines drafted by a party for an internal-only audience — i.e., the internal business client, stakeholders, and subject matter experts — to facilitate internal negotiations. For example, you are negotiating with your internal business client on how to handle a particular clause.

But what happens when, amidst all the confusion, you accidentally send a version of the contract containing internal redlines to an external party? Faux pas #2 is what happens! Only this faux pas can have legal implications if you’re a lawyer because then you may have disclosed attorney-client privileged information or attorney work product. Uh oh.

In order to avoid this major risk, make sure you have an organized method to keep track of external vs. internal redlines.

Using color-coded comments to protect internal redlines

Rule #5 of *Contract Redlining Etiquette* is to leverage internal redlines to build internal alignment. But “make sure you clearly distinguish between external and internal redlines to avoid accidentally sending internal redlines to external parties.” To help prevent these mistakes, Alnajafi recommends using a simple color-coding technique.

Pick a color to represent each type of audience: external (yellow), internal (blue), or note-to-self (green). If you are redlining in MS Word, you can simply highlight comments the color to indicate which audience the comment is intended for. In addition, Alnajafi recommends clearly labeling the document in the file name with “Internal Eyes Only” or something of that nature. When an internal redline gets resolved, you can either convert it into an external redline or delete it. This way, it is easy to double-check the document and make certain it does not contain internal comments (i.e., blue highlights) before sharing it externally just by giving it a visual review. The use of color can really come in handy when we’ve been staring at black text all day long.

Technology keeps out prying eyes

Contract negotiation software allows you to automate the distinction instead of using manual color-coding. First, contract owners assign each collaborator an internal or external role. Contract editors and reviewers tag their input as “internal” or “external,” and the software allows only the appropriately designated individuals to view them. An external party is not able to see internal redlines because their access is restricted in the system. Talk about a full-proof plan!

It is simple, reliable, and makes it easier to collaborate with more individuals confidentially.

Faux Pas #3: Changes without explanations

Ever receive a document where the other side redlined every little sentence of every clause and made some “interesting” proposed changes, without a single indication as to why they made those changes? Sure you have! We all have.

“When you provide a redlined document without explanatory comments, your counterparty has no choice but to guess or assume why you made the change, leaving them to essentially negotiate with themselves about how to respond to your proposed redline,” Nada explains, “and since people are less inclined to change unless they are provided a good enough reason, their automatic response is likely going to be a rejection.”

The problem with this faux pas (pun intended) is that it drastically reduces the contract reviewer’s leverage. Sure, you’re saving time on the front end by skipping over the explanatory comments, but in the long run, this shortcut is costing you big time.

People won’t change unless they understand why

Rule #1 of *Contract Redlining Etiquette* is to always accompany redlines with explanatory comments.

Studies in social psychology have shown that people resist change unless you give them a good enough reason to do something differently. If they don’t know or understand the reason you are asking for the change, they will probably resist making the change.

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Don’t risk an automatic rejection! Instead, use comments strategically to land the important negotiation points. Here are a few tips Alnajafi recommends using when crafting your comments:

- Use full sentences, not abbreviations or bullet points.
- Keep comments short and concise; no more than three sentences long.
- Once you’ve completed your markups for that round, re-read all the comments in one go to make sure they flow well together.

- Use comments to justify why you are requesting or rejecting a change, especially for substantive changes.

Technology can automate explanations using a playbook

With contract negotiation software, you can compile your best-performing language, terms and clauses into a library of contract templates. You can also create a company contract playbook that explains the strategic business or legal reasons behind specific phrases and clauses to improve everyone’s comprehension of the company’s larger goals. The software will flag unacceptable language or conditions, offer explanations as to why, and provide preferred fallback positions.

Digital contract review tools can speed and simplify your initial review and insertion of proposed redlines with explanatory comments. With one click, your system adds redlines for you.

Consider your counterparties' perspectives. Adding explanations for suggested revisions may help them understand the rationale behind proposed changes, which may get them to agree more readily.

Faux Pas #4: Hidden redlines

We've all experienced a sense of anxiety as we send a contract out for execution. As contract negotiators, the pressure is on us to make sure that the final contract says exactly what it is supposed to say — no hidden redlines.

Alnajafi says, "Regardless of intent or cause, the cost of hidden changes can be astronomical to the contract negotiation at hand. Hidden changes can lead to parties signing contracts with terms they were unaware of, parties feeling tricked or slighted, damaged relationships, and broken trust."

Some contracts professionals prefer to run their own redlines to be 100 percent confident that the final document does not contain hidden redlines. Running your own redlines means you are tracking all changes (both yours and the other party's) on your document rather than working off the latest version provided by the other party. This is extremely time-consuming and essentially turns the contracts professional into a scribe. There's got to be a better way.

Caught someone red-handed? Now what…

Rule #8 of *Contract Redlining Etiquette* is to control, verify, and clean the final version before requesting signatures. What happens if you discover a hidden redline during the verification process? According to Alnajafi, "If you receive a contract draft with hidden or incomplete redlines from a counterparty, don't assume the worst right away but also, don't ignore it."

First, Alnajafi recommends, determine whether the hidden change is material. If it is, then she suggests letting your internal business client know and raising the matter with the other party during a call. Keep the conversation professional without any blame or finger-pointing. People make mistakes.

However, if you can sense that it was more than an innocent mistake, or the other party is unwilling to take accountability for the "mistake," then you should discuss the ramifications with your business client.

Technology finds and flags hidden redlines

Software with built-in collaboration tools such as online discussion boards allow parties to work on the same document and communicate in real-time. At any point, you can determine a contract's status, and because the software tracks every activity, you can produce an audit trail of every revision and discussion. Easily click back to prior versions of a contract to compare changes and determine who said what and when.

Faster, smoother, more trustworthy contract negotiations

Contract negotiation software can help us redline contracts with proper etiquette, leading to more

efficient and trustworthy contract negotiations. Regardless of what tool you use, avoid these four redline rage-inducing faux pas to help cultivate cooperation and achieve better outcomes in your contract negotiations.

Redlining contracts does not need to be a painful process. All contract negotiators redline contracts on a regular basis. By applying the 10 rules of *Contract Redlining Etiquette* and adopting automation software, redlining faux paus can be avoided and the redlining fun can begin!

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