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Top Five Legal Mistakes Small Businesses Make

by Alan J. Hartman

Business gurus often advise entrepreneurs that they should not be afraid to make mistakes. But, when it comes to the legal aspects of your business, not being afraid of making mistakes can lead to disastrous consequences. What are the common legal mistakes business owners make? Here are my top five.

1. Delaying seeking legal advice. Knowing the legal pitfalls is key to avoiding them. When starting a business, many entrepreneurs put off retaining competent legal counsel either because they are too busy or because they think a lawyer will cost too much. The cost of prevention is much less than the cost of correction. Clients have paid thousands of dollars to fix mistakes that could have been avoided if they had spent a few hundred dollars in legal fees earlier. And in some cases, the mistakes can't be fixed.

2. Improper company formation and maintenance. Having the appropriate legal structure is important for both personal liability and tax liability. Proper formation also includes documenting the owners' rights. Nothing

dooms a business faster than an unresolved misunderstanding among the owners that could have been avoided by a written agreement made before the dispute arose. Once the appropriate structure is in place, a business must comply with the formalities of maintaining that structure, such as keeping corporate meeting minutes and



other records. Failure to properly maintain the business structure could result in the loss of liability protection.

3. Not protecting intellectual property. Intellectual property includes patents, copyrights, trademarks, trade secrets, and other confidential or proprietary information. Many businesses fail to put adequate

procedures in place to protect their inventions, works, and brands and to restrict disclosure of confidential information. Without such procedures and the use of appropriate agreements, a business may lose its valuable intellectual property assets.

4. Not having contractor agreements. A business often needs workers, but either it is not ready to hire employees, as is typically the case with a new business, or the

task is better handled by an outside contractor for work such as website development. Many businesses make the mistake of not having a written agreement with the outside contractor that specifies the scope of the project, ownership of work product and related intellectual property, noncompetition, nonsolicitation of customers, nonsolicitation of employees, and independent contractor status. A business is often

Cont. on page 2

How You Conduct a RIF Can Reduce Your Risk of Being Sued

by Nick Birkenhauer

The economic crisis is taking its toll on employers. Businesses large and small are slashing payroll and laying off employees. Even government offices, faced with crippling budget cuts, are sending employees home on furlough. No employer wants to be in a position of needing to reduce its workforce, but more and more employers are facing this grim reality due to economic conditions. An involuntary reduction in force (RIF) can be an effective tool for reducing workforce and shedding costs. RIFs also can lead to significant liability.

The primary exposure to liability associated with a RIF is a claim of discrimination or retaliation. A typical scenario is for a terminated employee

Cont. on page 2

Five Legal Mistakes, cont. from page 1

surprised to learn that it does not own the rights to the work product it just paid to have developed because there is nothing in writing to secure those rights or the written document is inadequate.

5. Not having employment agreements. A mistake closely related to mistake #4 is not having a written employment agreement with each employee. Many businesses assume that, since the employee is an employee-at-will, there is no need for a written agreement. If noncompetition, nonsolicitation of customers and employees, and ownership and protection of intellectual property are important to the business, it needs written employment agreements.

Making legal mistakes costs businesses money, lots of money, and sometimes results in failure. Don't let legal mistakes ruin your business.

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Reduce Your Risk, cont. from page 1

to allege that his employer selected him for the RIF not because of the reasons given by the employer, but because of his age. Indeed, an employee terminated during a RIF can maintain a claim of age discrimination merely by showing that he was: (1) 40 years old or older; and (2) replaced by a sufficiently younger person.

Employers are best able to defend against such a claim when they can show that, despite the former employee's ability to provide enough evidence of age discrimination to make a good case, the RIF was carried out according to valid selection criteria and was designed to keep the most qualified employees. To successfully use this defense—or, more importantly, to avoid a lawsuit in the first place—you must carefully plan the involuntary RIF. Any employer considering a RIF should do the following:

■ **Write a list of business reasons.** The first step is for top management to

identify in writing the business and/or financial reasons for the RIF, including economic savings and efficiency increases.

■ **Identify the goals of the RIF**, such as labor costs to be eliminated or the number of employees to be terminated.

■ **Consider alternatives.** Consider less drastic alternatives to achieve your goals such as elimination of temporary positions, shortened workdays, voluntary pay reductions, reduction of overtime, voluntary leaves of absence, and salary or hiring freezes.

■ **Draft selection criteria.** If no viable alternatives exist, the next step is to generate a written internal statement of well-defined selection criteria for termination. Always consult legal counsel to help determine appropriate selection criteria. A mistake

here could lead to significant liability down the road.

■ **Develop a selection procedure.** Identify the decision-making sequence and the persons responsible for those decisions. Involve your HR department.

■ **Ensure RIF policies are followed.** Make certain that all written RIF policies are known and followed by the decision-makers administering the RIF.

■ **Abide by employment contracts.** Be aware of any employment contracts that may remove an employee from the sphere of "at-will" employment and be sure to terminate in accordance with the terms.

■ **Consider severance packages coupled with written releases.** Releases can protect you from future claims, but they must be carefully drafted in order to be legally enforceable. Consult legal counsel before offering a severance package. The use of a valid release is, by far, the most effective means to reduce risk.

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Ohio Attorney General Helps Small Business

One of the Ohio Attorney General's (Ohio AG) primary duties over the years has been to protect Ohio consumers from fraud and unfair business transactions. Until recently, however, small businesses were unable to file scam complaints. Now, a business with fewer than 20 employees that has been targeted by unfair practices can file a complaint through www.OhioAttorneyGeneral.gov/Complaint or by phone at (800) 282-0515.

Stories from businesses that have already filed complaints with the Ohio AG:

■ A Trotwood trucking company made an Internet purchase for more than \$8,000. After company paid for the product, the supplier never delivered and failed to return phone calls. The trucking company filed a complaint with the Ohio AG's Office, which recovered a full refund for the company.

■ A West Jefferson library was charged for a web service that it never authorized. The Ohio AG's Office recovered \$244.

■ A Columbus auto repair company was charged \$849 for an unauthorized website advertisement listing. The issue was resolved and the business did not have to pay the charges.

To view or share a flier about this initiative, visit www.OhioAttorneyGeneral.gov/SmallBusinessFlier.

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