

Advising the Small Business Client

Mary-Anne E. Martell, Esq.

Small businesses account for the majority of all registered businesses in Maine. According to the most current federal data available, there are approximately 141,936 small businesses here. It is a true testament to the entrepreneurial spirit of Maine people. Historically, Mainers have had a reputation for hard work, independence, and tenacity. Running a small business is not an easy task and is certainly not for the faint of heart. If you are of the mindset that owning a small business will make you lots of money, allow you more time with your family, and you will never have to answer to anyone ever again, you better think again.

As part of my corporate practice, I advise small business clients whether they need to structure the business in an appropriate corporate entity for liability protection and tax benefit or deal with an employee issue. I often use what I like to refer to as the “team approach.” Any successful business requires, at a minimum, a professional team that consists of an accountant, an attorney, and a financial planner. While many an individual has the drive, determination, and mental stamina to withstand the potential challenges of starting a business, they may lack the knowledge, skill, and business expertise to have their product or service fulfill a real need in the marketplace. An accountant can advise on how the business should be structured, an attorney will handle the formation of the corporate structure and provide on-going legal guidance through the maze of business regulations, and a financial planner will assist in implementing a strong financial base. The nature of the business will determine whether other professionals are critical to the success and future of the business.

Potential business success is dependent on a variety of factors including but not limited to: sufficient capital, good management, proper planning, location, and marketing. If grappling with all those issues were not enough, the potential growth of a business brings a host of other complicated issues. An established customer base and consistent cash flow may warrant expansion to manage the demand for your product or service. The growth of a business is good. After all, that’s why you started your own company. With proper systems and people in place, you can now concentrate on the growth of your business and not trying to manage everything yourself.

It is not uncommon for my smaller corporate clients to have one or two employees. Due to the size of their business, there is no human resource department to provide guidelines for state and federal employment compliance, and a business owner’s lack of employment knowledge is not a legitimate defense. For small business owners, management and continued profitability require huge time commitments and leave little time for continuing employment education. It is better to be educated, well informed and prepared before an employee problem arises. For the small business owner, employee problems are time consuming and stressful and can decrease productivity.

Employers have a legal responsibility to their employees to make the workplace safe. However, accidents happen even when every reasonable safety measure has been taken. To protect employers from lawsuits arising from workplace accidents and to provide medical care and compensation for lost income to employees hurt in workplace accidents, businesses are required to buy workers compensation insurance. Workers' compensation insurance covers workers injured on the job, whether they're hurt on the workplace premises or elsewhere, or in auto accidents while on business. It also covers work-related illnesses. Workers compensation insurance must be bought as a separate policy. Although in-home business and business-owners policies (BOPs) are sold as package policies, they do not include coverage for workers' injuries.

As small businesses grow, it becomes increasingly important to have a structured set of rules and guidelines to address everyday issues that the employees are aware of. Comprehensive employee handbooks clearly explain employment policies as well as the consequences for violating these policies. Every employee receives the same information about the rules of the workplace; employees know what is expected from them and what they can expect from the business. Having an employee handbook can also provide legal protection if an employee later files an employment claim against the business. Employee issues include, but are not limited to, salaries, performance reviews, benefits, drug and alcohol abuse both in and out of the workplace, sexual harassment, discipline, employee safety and complaints.

Whether it is business issues involving tax liabilities, state and federal employee compliance laws, and/or corporate entity formation to shield personal liability, a successful business owner needs to be well educated and informed to handle the challenges of running a small business. While it is not impossible for a small business owner to know everything about business, it is highly unlikely and very risky. Seek competent counsel in those areas. There is already enough stress in running your own company.

Mary-Anne Martell is Founder and Senior Counsel at Seacoast Law & Title, 240 Main Street, Westbrook, ME 04092. She welcomes questions and/or comments at law@seacoastlawme.com or contact her online at www.seacoastlawme.com