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Risk Management 101 - A Legal Perspective

We all face risk in our businesses every day. These risks can range from entering into a bad deal with a supplier, dealing with a difficult customer, failure to collect a debt owed to us, injury on the premises of our business – the list goes on. While risk can never be totally eliminated, there are steps a business owner can take to mitigate business risk. Below, I list three suggestions. This list is not meant to be exhaustive, but it can give you a good place to start to think about risk and how to protect yourself and your business.

1. Consider incorporating your business (or forming another entity like an LLC). Doing business as a corporation or a limited liability corporation (LLC) can be a good way to protect personal assets from business liabilities. When a corporation or LLC is properly formed and operated (and the appropriate taxes paid), business debts do not attach to the individual under most circumstances. Thus, if your business is sued, your personal assets are not at risk. The downside to these entities can be additional tax issues, so be aware before you incorporate.

2. Carry appropriate insurance. Most businesses need insurance of one form or another. Some insurance is mandated by law, such as workers compensation insurance. Other insurance is just a good idea to have, such as general commercial liability insurance and possibly errors and omissions insurance, depending upon your industry. It's a good idea to check with a good insurance broker to understand coverage and determine what your needs are. Joining a trade association for professionals in your industry can also be a good source of insurance information and policies.

3. Use contracts. Most of the time, it can be a good idea to use contracts to memorialize the terms of an arrangement between parties. Contracts prevent misunderstandings, confirm that the parties in fact have a meeting of the minds as to the terms of the agreement, and help refresh faulty memories. In many situations, a basic agreement can be enough to serve these purposes. However, sometimes a more elaborate agreement will better clarify and document the rights of the parties. A knowledgeable attorney can help you draft a contract that can meet your needs. Of course, when presented with a contract to sign, be sure you read it carefully and understand all of its terms before you sign.



Seven Tips to Help Draft a Contract

- Clarity - Use clear language that you understand and is easily understood by the other party
- Comprehension - Make sure you understand all terms and conditions you are requiring
- Enforcement - Consider how the contract would be enforced if one party fails to perform
- Importance of Terms – Before negotiating with the other side, be sure you know which terms are most important to you and which terms are negotiable
- Beware of Boilerplate – Don't simply copy from another contract; be sure you know what the terms mean
- Standardization – If you anticipate having several business relationships of a similar nature (many suppliers, many customers), try to create a standard agreement used with all parties of a similar type
- Consultation with Counsel – Speak with a knowledgeable attorney who can review your agreement

Client Corner

QUESTION: Why Do Business Lawyers Recommend Having a Tax Professional for My Business?

ANSWER: Business lawyers know that many decisions, especially decisions you make in the early phases of your company, can affect your personal and business taxes. In addition, many new business owners are unaware of the tax consequences of various decisions, including choosing the right entity for your business, setting up proper accounting and banking procedures, and preparing your payroll. These tax issues work together with some legal issues. Having the right team can help you build a foundation for success.

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