

Legal Considerations for Small Business Owners

When forming a business, selecting a name, determining how it will be setup and figuring out how it will operate on a daily basis are all important considerations. In addition, in the United States, all businesses are required to follow rules set by federal, state and local governments. While these rules can vary depending on the type of business, it is important that business owners understand and follow them to protect both their business investment and their customers.

Outlined below are some basic legal considerations that new business owners should discuss with an attorney.

TIP # 1: Don't Bet The Farm

(Protect Your Personal Assets From Your Business Risks)

Choice of Entity - What Type of Business Structure Should I Setup?

Choosing the right structure for your business is very important, as it will have legal and tax effects. Some of the most common business structures are:

- Sole Proprietorship (one owner)
- General Partnership (more than one owner)
- Limited Partnership (LLC)

Steps to Form an LLC

- File Certificate of Organization with the Iowa Secretary of State's Office (must list name of Company, street address of registered office, name of registered agent, and signed by the incorporator)
- File Biennial Report with Iowa Secretary of State's Office every two years
- Prepare Operating Agreement (document showing how business operates)

TIP # 2: Poor Financial Management Will Debilitate Your Business

(Understand Your Financial Records)

- Prepare a budget
- Bookkeeping - day to day recordkeeping
- Prepare monthly financials
- Prepare simple cash flow statement

TIP #3: Nothing Is Certain But Death And Taxes

- **Obtain an Employer Identification Number (Form SS-4 or online at www.irs.gov)** Once your business is formed, you should obtain an employer identification number (commonly referred to as an EIN). This number can be requested by filing Form SS-4 with the Internal Revenue Service or by applying for it online at www.irs.gov. This number is like a business's social security number in that it is used for both state and federal tax purposes and when opening bank accounts, getting loans and other similar situations that require company identification.
- **General Rules:**
 - Always timely file (even if you can't pay)
 - Pay the IRS and the Iowa Department of Revenue **first**
 - **Always, always, always pay withholding taxes & sales tax (known as Trust Fund Taxes)**
- **What Permits and Licenses Do I Need?** Depending on the type of business, you may need a variety of licenses or permits.
 - A business that is selling goods or services that are subject to sales tax will need to apply for a sales/use tax permit from the Iowa Department of Revenue (IDR).
 - If you are purchasing goods for your business that are not subject to sales tax, you can apply for an Exemption Certificate. Then when you make purchases, the suppliers will not charge you state sales tax. For example, when goods are purchased for resale, they are exempt from sales tax on the initial purchase.
 - A company that has employees will also need to apply for a withholding tax permit through the IDR so that it can withhold employee taxes on payroll (see "Payroll").
 - Certain types of businesses, such as restaurants and bars, may require specific licenses such as alcohol permits. Iowa also has a specific law which regulates games of skill or chance, raffles, bingo and social gambling. If your business is looking to raise money by putting on a casino night or by selling raffle tickets, it is important to note that the law may require a special permit.

TIP # 4: Don't Risk Your Business On A Misclassification

(Correctly Classify Your Employees v. Independent Contractors)

- **Employee v. Independent Contractor**
 - Employees - Employer required to withhold and match certain amounts of wages and may need an I-9
 - Independent Contractor - Employer not required to withhold or match wages and no I-9 is necessary, also may need to be insured separately
- **Hiring Employees**
 - Background checks
 - Keep employment applications for at least one year - even if you don't hire the candidate.
 - Physical testing of new hires cannot be done at anytime during the hiring process; it should be conditional offer of the hire.
 - Employers cannot require random drug testing of employees (Iowa Code 730.5)
 - Classify employees properly - hourly minimum wage (non-exempt) vs. salary (exempt)

- Written policies are required by law (how to calculate 40 hour work week, pay periods and how to accrue vacation and/or sick leave).

- **Immigration Status**

- **I-9 Compliance**

- Every "employee" hired AFTER November 6, 1986 must complete an I-9 on or before their first day of work.
- Do not use the I-9 for screening potential employees. The I-9 must be completed post-hire.
- Keep I-9s on file for three years from date employee started work, one year after termination date or the later of the two.

- **Work Visas**

- Work visas may be available for a foreign national to work for you in some situations. If you are not a U.S. citizen or permanent resident, you should talk with an immigration attorney that does employment-based immigration before employing yourself in your business. Work visas are not always possible and it is important to talk with a lawyer as soon as you find out the person you want to hire needs a visa.

- **Avoid Discriminatory Practices**

- Demand that an employee show specific documents
- Ask to see employment authorization documents before an individual accepts a job offer
- Refuse to accept a document, or refuse to hire an individual, because a document will expire in the future
- Refuse to accept a receipt that is acceptable for Form I-9 purposes
- Demand a specific document when re-verifying that an employee is authorized to work
- For more information visit, the [Office of Special Counsel](#)

Tip #5: Protect Your Intellectual Property

Intellectual property is an important asset to both new and existing businesses. Almost every business owns some form of intellectual property, such as your trade name, logo, website address, customer lists and proprietary or confidential business information. Securing intellectual property can protect ideas from being stolen, business and product names from being misused and products from being copied.

Tip #6: Put All Agreements In Writing

It is a good business practice to put almost everything in writing, rather than relying on an oral agreement or a handshake. This might include contracts, purchase orders and policies and lease or rental agreements, among other things.

Tip #7: Treat lawsuits Seriously

- If you're named as a Defendant in a lawsuit, you have a limited amount of time to respond to the suit by filing your "Answer."
- In Iowa, you generally have 20 days from the time you are served with the suit papers to file an answer.

Additional Resources:

- [*Doing Business in Iowa Guide*](#)
- [The Start-Up Launchpad](#) - legal resources for start-ups and entrepreneurs