

Can formatting and font size in your contracts create liability? You bet.

Contracts, leases, purchase and sale agreements, non-disclosure agreements, letters of intent, etc. These are the legal tools that businesses use in everyday commerce. They seem commonplace. Lots of folks believe that they can use a form off of the internet or tweak something that they already have, and be completely within the bounds of the law. They change the size of the type to fit the contract on less paper (or get it on one page), and save a little money. Business people do this all the time, and they think that they have a solid contract. But did you know that the format a contract can get you into legal hot water? Were you aware that the point size of the type can cause you problems? It can.

There are more than 100 instances in Texas law where the size and/or character of the font of a document are spelled out. Some of those 100 instances can cause language that you thought was protecting you to be a cause of increased liability.

In one instance, a Texas business opportunity contract must have certain information in ten point type, including: the terms of payment; a detailed description of the acts or services that the seller will perform for the purchaser; the seller's principal business address; the name and address of the seller's registered agent in Texas; the delivery date; and a description of the nature of the buy-back or security agreement, if there has been one represented by the seller. TEX. BUS. & COM. CODE § 51.201. If those items are not in ten point type, the law states that you have committed a false, misleading, or deceptive act or practice under the Texas Deceptive Trade Practices Act, which can triple the buyer's damages. TEX. BUS. & COM. CODE §51.302. That is a stiff penalty for simply not having that information in the correct size type.

Another example is in certain consumer transactions in Texas where the merchant is required to give the consumer a written notice of the consumer's right to cancel the transaction prior to midnight on the third business day after the transaction. TEX. BUS. & COM. CODE §601.052. This notice must be in boldfaced type of a minimum size of ten points. TEX. BUS. & COM. CODE §601.052. The required notice of cancellation form that must also be attached, must be in ten point boldfaced type. TEX. BUS. & COM. CODE §601.053. A merchant who violates these provisions is liable to the consumer for actual damages, reasonable attorneys' fees, and court costs. TEX. BUS. & COM. CODE §601.202. Additionally, a violation of those provisions is considered a false, misleading, or deceptive practice or act under the Texas Deceptive Trade Practices Act, which provides for treble damages. TEX. BUS. & COM. CODE §601.204. Again, a harsh penalty for simply not having the right size font or typeface in your contract.

There are many other instances where the law dictates what size font and what style of type certain language must be in. The moral of the story is to always have a business lawyer check your contracts. And not just for content, but the formatting as well, to keep you within the bounds of the law.

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