

Avoiding Legal Pitfalls - An Ounce of Prevention is Worth a Pound of Cure

Benjamin Franklin's advice is especially applicable to legal issues facing businesses in the current economic downturn. A "pound of cure" could mean hundreds of thousands of dollars in legal fees defending a claim or in lost revenue. Among other benefits, taking the following measures will help prevent legal pitfalls:

Select and Form the Proper Entity. S-Corporations, Limited Liability Companies (LLCs), and Limited Liability Partnerships (LLPs) all provide flow through taxation of business income to the owners while shielding the owners' personal assets from liability. Businesses that own real property may want to consider having the property owned by a separate entity to further protect the business. Keeping accurate business records and exercising proper internal governance is a critical component of maintaining liability protection. The proper entity also allows a business owner to create a succession plan for passing the business on to employees or family or for selling the business.

Understand and Follow Employment Laws. The cost of defending a claim for discrimination or wrongful discharge can cripple a small business. A well written personnel policy manual provides an essential framework for understanding employment laws by setting expectations, rules, and consequences for all workers. However, just having the manual is not enough. Businesses must ensure they adhere to the policies for the manual to effectively protect the business. Also, businesses should always consult with legal counsel before discharging an employee.

Review Insurance Coverage. Proper coverage for professional, property, unemployment, and workers' compensation insurance is important and sometimes mandatory for businesses. Businesses should know what their policies do and do not cover so they can manage risk accordingly.

Review Contracts and Credit Policies. Many businesses are struggling to get paid for their work. Proper contracts and credit policies can help improve cash flow and will assist with collecting on delinquent accounts.

Protect Intellectual Property. Trade Secrets protect confidential information used in trade that provides a commercial advantage. Copyrights protect the tangible expression of ideas. Trademarks protect product identifiers. Patents protect novel machines, processes, or products. Protecting these forms of intellectual property can be the difference between success and failure for some businesses. Consulting an intellectual property attorney can help a business decide whether it has intellectual property that can be protected.