

Ten Simple Legal Rules for Business Owners

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While it seems there is no limit to the number of laws, regulations and rules that your company must follow, there are a few basic steps that your company can take to protect itself from the most common legal problems. Following these ten simple rules could help avoid or limit your business' potential liability.

1. **Maintain a minute book and other business records.** The legal requirement which is perhaps most often overlooked by businesses is the need for holding annual meetings, recording meeting minutes and maintaining those minutes in a minute book. Before taking any significant action, your company should also consider whether resolutions of members or shareholders are required by law or by your operating agreement or bylaws. If your company has more than one owner, you may also need certificates to evidence your equity interest in the company. All of these documents are integral to protecting your company against legal liability.

2. **Protect your intellectual property.** A company's most valuable assets are often its intellectual property, such as your trade names, logos, website addresses, customer lists and proprietary or confidential business information. Trademark registration decreases the chance that another company will use the same name or logo, prevents customer confusion and reduces the potential that someone else will capitalize on your goodwill and positive reputation. Registration also creates an intangible asset that may gain value and can be sold or licensed. Failure to protect trademarks may have serious consequences, especially if a competing company uses the same or similar trademark. Without proper protection, you could be accused of infringing upon someone else's trademarks or be forced to abruptly change your name and compensate the trademark owner. Additionally, if your employees or vendors have access to confidential or proprietary information, such as the identity of your customers or data regarding your business process, your company should require those people to sign confidentiality or non-disclosure agreements.

3. **Investigate and take action on all reports of harassment and discrimination.** All managers and supervisors must report to the human resources director or other designated person any and all incidents or claims made by employees in connection with sexual harassment or any other type of harassment or discrimination. If managers do not report the incident or claim, and an investigation does not occur, the company is at risk. Every employee should undergo annual anti-harassment and anti-discrimination training. The company's written policy prohibiting harassment and discrimination of any kind should be clearly and effectively

communicated to every employee. During any investigation, if new incidents or complaints are discovered, those reports should be thoroughly investigated. A report, which includes written statements of witnesses and the resolution of the claims, must be well documented and placed in the appropriate personnel file.

4. **Read and understand every agreement or contract before signing.** The owner or financial officer of every business should undertake a careful review of all agreements and contracts, and seek advice from a lawyer for all significant or complex agreements or contracts. Failing to read and understand the fine print can be disastrous. Be particularly mindful of indemnification clauses, waivers and releases, venue or forum selection clauses, automatic renewals of the agreement and assignment clauses that prohibit your business from transferring the agreement to a new purchaser or new operator. Make sure all vendor and supplier agreements allow for your company to cancel for any reason, or no reason, upon written notice. Finally, make sure you understand the interest, penalties, late fees, attorneys' fees or other costs associated with breaching the contract.

5. **Obtain current certificates of insurance from every vendor and supplier.** All businesses must ensure their vendors and suppliers are adequately insured, and ask for updated certificates periodically. Make certain that the insurance certificate lists your company as an additional insured party on the policy.

6. **Keep accurate maintenance logs on all equipment.** Many lawsuits have been lost by businesses because of a failure to keep accurate maintenance logs for equipment owned or serviced. This includes the monthly, quarterly or annual maintenance checks on elevators, kitchen appliances, machinery, vehicles and any other item that has the potential to cause injury. It is important to maintain clear and accurate records to show a judge, jury or opposing lawyer the diligence that went in to ensuring that the property was kept safe. Among other things, your records should reflect the times and dates of inspection, any and all repairs made and the name of the qualified employee responsible for maintaining the records.

7. **Develop a litigation preparedness plan.** A core component of modern litigation is discovery, which requires production of documents, written responses to questions and depositions of witnesses. Often the most costly and burdensome part of litigation, the time, energy and expense associated with discovery, can wreak havoc on an unprepared company. During discovery, a company generally must produce every document related to the transactions or events at the heart of the lawsuit, such as e-mails, spreadsheets, documents, employee records, accounting data, account information, photos and almost anything else stored or accessed on a computer. Your company must take active steps to ensure that none of this information is deleted while the lawsuit is pending or, in some cases, before the lawsuit even begins. Since many elements of the discovery process are common to all lawsuits, your company can proactively prepare for discovery by gathering and reviewing those common elements before becoming involved in litigation. A litigation preparedness plan could save hours of employee time and can reduce the chances that your company will inadvertently delete or produce confidential information, a risk that increases when the discovery process is hasty and not organized. Deleting or failing to provide information relevant to a lawsuit could result in fines and penalties against your company.

8. **Have all employees who pour, serve or sell alcoholic beverages, and all managers, attend an alcohol awareness program.** All employees must understand the laws and regulations that apply to the pouring, serving and selling of alcoholic beverages to your patrons and guests. Most states have laws which require establishments to adhere to alcohol safety and awareness standards, and your insurance carrier likely has similar requirements. If someone leaves your business and is injured or injures another person or property, the patron's lawyer will look for facts to justify imposing liability on the business which served that person alcohol.

9. **Adopt a written policy regarding the use of company computers.** In nearly every lawsuit filed in the last few years, some portion of the evidence supporting or refuting the claims or defenses is an electronic communication or transmission. Your employees could implicate your company if they use a company computer to send or receive e-mails or visit websites that later become relevant to litigation. Although your employees may delete messages from the computer they use, those e-mails are not irretrievable - they frequently are contained on back-up tapes, servers or in temporary cache files that continue to store this information. Every company should adopt a written e-mail policy requiring all employees to avoid creating, viewing or forwarding offensive or inappropriate e-mails or internet postings - especially any content related to a person's race, color, national origin, religion, sex, sexual orientation, age, disability or veteran status. Employers should avoid creating, viewing or forwarding jokes, cartoons, games or chain letters. Your email policy should provide for immediate disciplinary action or termination of employment, if necessary, for violations.

10. **Protect confidential information and report any misuse or theft of that information.** Releasing information, even accidentally, to the wrong person can result in a claim being filed against your company. Be especially cautious with social security numbers and credit card and bank account numbers of your employees and customers. Your company should adopt a written policy regarding access to and the protection of confidential data. If your company is subject to the Fair and Accurate Credit Transactions Act, you may be required by law to adopt and implement a written plan. If you receive a request to release information, such as a subpoena, contact an attorney to assist you in determining how to comply with the request without unnecessarily disclosing confidential information.

For more information about reducing your company's potential legal liability, please contact Ryan P. Siney at (717) 234-4121 or rsiney@tuckerlaw.com