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TOP LEGAL ISSUES BUSINESSES FACE ... AND HOW YOU CAN AVOID THEM

by Judy Dahl

Every business owner dreads facing legal action, whether it's brought by an employee, a customer, a business partner, even a passer-by. In today's litigious society it's something to guard against. Area attorneys see certain legal issues arise more often than others, and offer advice for heading them off.

General business issues



Kamperschroer

Poor—or no—succession planning is likely to cause legal problems, according to George R. Kamperschroer, managing partner, Neider & Boucher, S.C. "If owners of closely-held businesses put off planning until they're ready to retire, they've waited too long," he says. "A delay means lost windows of opportunity, and if you pass away without planning, your heirs will have to do it for you. At best, this may mean a different approach than you'd have wanted; at worst, it may mean a long family fight."

He also says many small businesses begin without adequate legal or financial advice, including advice about setting up their ownership structure. "At the beginning of a business, most entrepreneurs have enough issues to concern them that they don't pay enough attention to properly recording actions taken, such as stock sold, or agreements to let others buy stock. If the business is successful, at some point there will be disagreement among the participants as to who owns what percent of the business, who's entitled to what compensation, who has the authority to act on behalf of the business ... We see these problems constantly."

Kamperschroer says time spent at the outset to clarify these matters can save a lot of problems and prevent costly disputes later on.

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Mark Ehrmann, partner, Quarles & Brady, LLP, notes that a number of his firm's clients have expressed concern about the legal issues surrounding manufacturing products and providing services in foreign countries, particularly India and China. "The cost structure in the U.S. makes products produced here very expensive relative to those produced overseas," he explains. "Accordingly, companies consistently explore establishing operations in those countries or setting up joint ventures with foreign companies." This creates a number of complex legal issues, so companies contemplating joint ventures should work closely with an attorney experienced in handling international business initiatives.

Employment law issues

Recent regulatory changes have affected employers' responsibilities for handling many employment law issues. Employers should carefully review their policies to ensure they're complying with all applicable changes, according to Bonnie Wendorff, head of the employment law group at Neider & Boucher, S.C.

"Since the overhaul of the federal overtime

rules last year, we're seeing a significant upswing in the number of overtime claims filed by both current and former employees on the basis that they were improperly classified as exempt (salaried) when they should have been non-exempt (hourly)," says Wendorff. "Nationwide, some larger employers have been targeted for class action litigation on overtime issues."

Wendorff continues, "And since 9/11, employers have become more attuned to security issues. The use of criminal background checks has increased accordingly." Employers using third parties to conduct background checks on applicants and employees must comply with the federal Fair Credit Reporting Act. "Failure to do so can result in liability running into the hundreds of thousands of dollars," she says.

Many employers access background information directly, through public records resources like the Circuit Court Access Program (CCAP) or the Department of Justice Web site. "Although this information is readily available, an employer's right to use the information is not unlimited," says Wendorff.

She also cites identity theft caused by employers' failure to properly safeguard employee records as a serious problem, and recommends business leaders review their document-destruction standards.

"Although workplace dress and grooming

requirements are generally permissible, we've seen a steady increase in discrimination cases based on what we in the legal business call 'image' or 'appearance,'" adds Wendorff. "Nowadays, we advise clients to be sure they can articulate a legitimate business reason for any dress or grooming requirement, and that they evaluate any complaint about such a requirement carefully to be sure they're not inadvertently discriminating."

A fair number of employers have recently asked her firm for help in developing policies governing workplace relationships. "Relationships between supervisors and subordinate employees, even where they appear to be consensual, must be looked at carefully for potential conflicts of interest, and also for potential harassment situations, especially when the relationship breaks up," she explains.

"Employers can generally choose whether to ban personal relationships altogether, ban them only for supervisors and subordinates, or permit relationships," says Wendorff. "However, because of the potential problems workplace relationships pose, one key element of any policy ought to be a disclosure provision requiring employees involved in the relationship to inform management about it, so that the circumstances can be evaluated and appropriate steps taken to prevent potential conflicts or harassment claims."