

Why Every New Business (and Even an Old One) Needs an Attorney



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From corporate set-up to corporate exit and everything in between, a new business will encounter issues and challenges which the counsel of an experienced business law attorney can help negotiate and build a strong foundation for your business.

It is important to develop a strong relationship with the attorney you choose to help you establish a solid business. For most small businesses, it is financially impractical to have an in-house general counsel, but an attorney on retainer can provide a company with important assistance on typical and atypical operating issues. Your lawyer may become a de facto business partner, providing an outsider's perspective, and who can make a non-biased evaluation of matters and provide input on legal implications of decisions that will impact the company.

Contact an attorney early in the business development process, and once you feel comfortable with your choice, a couple of key elements your attorney can assist with include:

Corporate set-up: Setting up a corporation is usually a relatively simple operation that many entrepreneurs choose to do themselves. However, the corporate entity you choose is important in establishing the tax implications and growth opportunities for your business, so this step should be given serious thought. An experienced attorney and your accountant or tax advisor can help ensure that your corporation is set up with your best interests in mind. A business attorney can also assist in navigating the corporate governance requirements that come with an S-Corp or C-Corp, the yearly registration requirements, and various issues discussed below.

Corporate operating agreements: A well written operating agreement is essential to avoid questions and problems that may arise as a company gets older, bigger, and more diverse. Operating agreements should provide the foundation for capital investments, establishing the roles and responsibilities of corporate officers, basic provisions for hiring and firing, and corporate succession. The operating agreement will also serve as the basis for developing human resource policies, ethical operational procedures, and growth management processes.

Contracts and agreements: If you're not an attorney, the legal terminology you'll read and the contracts that you may be asked to understand and sign can seem overwhelming to the point that you feel like just signing the document and getting on with what you wanted to do in the first place – build your company. An attorney can review contracts, renegotiate contracts to protect your interests, and draft new contracts for matters within the company and for outside vendors or partners. Contracts are usually pretty boring and often difficult to understand, but there are lawyers who enjoy contract issues and can protect your company from ending up in a bad place.

Employment issues: Employment issues are critically important in the overall success of your business. Internal corporate policies and decisions on employee compensation; hiring, promoting, and firing; and ensuring that the appearance of (or actual) discriminatory practices do not creep into your operations should be made in consultation with a human resources specialist or employment attorney. Compliance with state and federal laws, particularly recordkeeping, will be crucial in keeping your company on the path to success. Do you plan on hiring employees or is the nature of your business such that independent contractors will work best for you? It is important to know the difference and to make sure that your independent contractors are not being treated as employees which could spell trouble with state and federal tax law.

Intellectual property and trade secrets: Intellectual property includes works that are (or should be) copyrighted, trademarked, or patented. Many small businesses have intellectual property or a trade secret that is the key element in the ultimate success of the company, and that intellectual property or trade secret must be protected. While there are many self-help programs and IP firms who will file IP protections, you may also be giving up a portion of your rights to the IP by allowing these companies to file protections. After all, they are in business to make money just like everyone else. Your attorney can navigate the process of IP and trade secret protection through his or her experience in filing patents or registering trademarks or copyrights. In addition, experience with the proper steps to take to keep your trade secret a secret within your organization can provide the long-term peace of mind that filing companies often don't provide.

Social media and ethical issues: With many companies having an online presence on Facebook, LinkedIn, and Instagram, it's important that you monitor what goes up online for clients to see and comment on. Policies and oversight on what gets posted and how it affects the company's public perception and reputation are important. Employee actions can also get a company in trouble, especially when cameras seem to frequently catch a person's meltdown which then goes viral. We have all heard stories of individuals who have been terminated from employment because someone's poor choice of response to a particular incident has brought ethical or judgmental concerns upon a company. A company's response to such situations should be part of human resources policy development.

Creating an exit strategy: The continuation of a business following the passing or resignation of the founder or president may be more critical in a family owned business than in a partnership or corporation, and here again, a well thought out and well written corporate operating agreement can help in transitioning to new leadership. Commonly referred to as Buy/Sell Agreements, the time to create such a document is early in the life of the company, as opposed to waiting until circumstances force the drafting of the agreement. Additionally, it makes more sense to draft a Buy/Sell agreement when the parties are still friendly and are more likely to agree to an amicable separation from the company.

If your company needs legal assistance, please contact The Law Firm of Robert D. Schmitter, LLC at <https://schmitterlaw.com> or bob.schmitter@schmitterlaw.com.