

Skimping On Legal Fees May Be Penny Wise But Pound Foolish For Small Businesses

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If attorneys had a nickel for every time that a business owner told them about the high cost of litigation, they could all retire.

It is no secret that litigation is time consuming and expensive. Business owners always ask about the best way to reduce litigation expenses. The best way is to AVOID IT! Litigation takes business owners and managers away from doing their jobs and accomplishing the business objectives of the company.

This article will provide a few tips to help avoid litigation and allow your business to run more efficiently and effectively. These are the secrets that many attorneys do not want you to know.

- 1. Employee Handbooks:** Many small businesses do not have Employee Handbooks, but all small businesses should have one. Employee handbooks and effective policies are some of the most basic ways to avoid litigation by employees of your business. Many businesses are reluctant to have specific policies to which they must adhere. Others do not want to spend the money. Properly drafted policies may help avoid those dreaded wrongful termination and discrimination lawsuits that many businesses face. In my experience, almost every wrongful discharge or discrimination case filed against small businesses has a recurring theme – no employment manual. Consider this an investment in the growth of your business and a risk management step that can save your business. It is important to remember that employers faced with litigation have a great deal of exposure both financially and with respect to the goodwill of the business. Businesses involved in litigation must retain counsel and often experts. If you lose, your business faces a judgment and, in many cases, is responsible for the attorneys' fees of the successful employee.

2. **Properly drafted agreements:** Your business is a party to many contracts. In certain circumstances, you may not even think of the promises that you make as a contract. Even if you do and perform all of your obligations, you may still encounter a claim for breach when the other party claims that you did not meet his or her expectations. To ensure the profitability of your business, all contracts should be prepared and/or reviewed by counsel. In particular, form agreements should be prepared by an attorney who understands where the problems may lie. Terms must be specific and the language clear. The scope of work should clearly be set forth and the expectations in the event of default should be straightforward. Many provisions should as be included such as interest, attorneys' fees, the forum where the litigation should be situated and what constitutes a default. Your contract can be your best ally or your worst enemy. You decide.
3. **Insurance audit:** It is essential that your business is fully insured for the specific needs of your business. Of course, this starts with the selection of a good broker. Many business owners think that a commercial general liability policy is sufficient to protect its interests. In fact, it is only the first step to protect you and your business. Many other policies should be considered:
 1. *Business interruption* – to replace business income resulting from an event that interrupts the operation of the business;
 2. *Key person* – life insurance for the death or disability of a key player in the business;
 3. *Employment practices liability* – professional liability coverage for employee claims of discrimination, wage violations, and sexual harassment;
 4. *Errors and omissions* – coverage for negligence resulting from professional advice and services; and
 5. *Workers compensation* – coverage for employee injuries either at work or during the scope of his or her employment; this coverage is required by law.
4. **Evaluate and better understand what has caused legal problems for your business in the past:** As you have heard countless times, those who do not learn from the past are bound to repeat it. Is there a recurring theme underlying litigation against your business? You must take the time to understand what you have done wrong in the past and how it can be avoided in the future. A careful study of your failures and successes is necessary to avoid litigation and ensure profitability.
5. **Act early:** Do not wait until you are served with a complaint before beginning to tackle the problem. When an issue arises, tackle it. For example, if a claim for discrimination is made, immediately start an investigation and question the complainant, alleged actor and any witnesses. Before taking a particular course of action, educate yourself. Understand your rights and responsibilities. If you are concerned about compliance, seek an advisory opinion from an attorney. Research what you want to do before doing it. Attempt to understand applicable regulations and documents. During the hiring process, perform background checks, check references and, where appropriate, perform drug tests. Do not let your ego get in the way; research issues and listen to others. If you or one of your supervisors has made a mistake, acknowledge and address it.

Although implementation of these tips may take time and money, it may be the best money that your business has ever spent. Not only is litigation expensive, it is disruptive as well. This information will

save your business time and money. It will help you avoid litigation and it will allow your business to operate more profitably and efficiently.