



Costly Legal Mistakes in Business and How You Can Avoid Them!

Legal mistakes can cost you a great deal of time, money. Here are some common legal mistakes business owners make — and some practical steps you can take to prevent or resolve them

1) Choosing the wrong business entity or not converting after growth

If you're just starting out, a sole proprietorship or partnership might suit you just fine. These entities typically require fewer formal government requirements to start.

That said, make sure you are not missing out on the opportunities afforded by a corporate structure. The various entities come with different legal benefits — for instance, if managed properly and compliance laws are followed, your business' liabilities are treated separately from your personal liabilities. There are potential tax advantages by organizing a business as some type of corporate entity.

As a business is launched and as it grows, you can save your business money simply by sitting down and evaluating whether your particular business would benefit from a different structure.

2) Not having a clear agreement with co-founders

If you're not the sole founder or business owner, you need to have a written agreement between you and the other founders to outline your rights and responsibilities within the business. In some ways it's like a prenuptial agreement for your business. The contract should outline the following:

- Who owns what percentage of the company
- The role and duties of each founder
- Your salaries (if applicable)
- The amount of cash and assets each founder is expected to contribute
- The steps you'll take if you should ever decide to sell the business (or should a founder terminate their interest)
- A process for making major decisions.

Additionally, the operating agreement should be set up in a way that anticipates potential causes for disagreement and provides a specific process to resolve conflicts should they arise.

3) Having a weak contract (or no contract at all)

Contracts govern the way we do business with vendors, employees, subcontractors, business partners — the list goes on. You need to draft contracts carefully to ensure they protect your business interests and

goals. Contracts essentially describe the promises, rights, and duties that parties to the contract owe and the benefits that are expected. For example, generally speaking, the “Grant” section in a franchisee/franchisor standard agreement informs a franchisee that the franchisor grants a limited, non-transferable, non-exclusive right to use the franchisor’s trademark and operation system for the duration of the franchise contract.

Having an agreement that protects your interests can be invaluable should you need to enforce another’s obligations under the contract. Even more, creating a contract from the beginning of a relationship will save you time and expense as your business grows and as you deal with different vendors, subcontractors, or other parties in larger numbers.

An important reminder for folks not experienced with using contracts or receiving them is that all contracts are negotiable. Just because it is typed up and given to you from a bank, insurance company, or franchisor, doesn’t mean you cannot cross out items and say no, or add in language to make the contract more fair for you. You certainly have your own right to make your own edits and suggestions.

Having your own template contracts can help establish an agreement that has considered your interests, as well as those of the other party, and can be tweaked for specificity on a case by case basis. Contracts that are clear and concise with defined terms of the agreement, like pricing, timelines, limitations on liability, roles and responsibilities, and more can help establish good business relations and avoid legal pitfalls.

4) Failing to understand and protect your intellectual property and other business assets

Intellectual property is one of the most valuable assets to a business. The right patent, trademark, or copyright protections can go a long way to ensuring your unique ideas remain yours alone. In a nutshell, patents protect your new inventions and products; trademarks cover words or symbols, like your company name; and copyright protects original works like articles, videos, software, and advertising.

Proper state and federal registration of your intellectual property can protect it from others using it without your authorization. Establishing trade secrets and confidentiality provisions in agreements can also be useful when it comes to dealing with subcontractors or potential investors. Anything less can open your business up to intellectual theft and legal conflict.

5) Having misguided employment practices

There are plenty of ways a business can make missteps when it comes to employment practices. For example, some businesses make the mistake of misclassifying their workers, treating subcontractors as employees and vice-versa. Employees are generally hired on a more consistent basis, with benefits and a salaried pay, while subcontractors tend to work more sporadically on a contract basis with a different pay structure. Make sure you understand the difference.

Other examples of poor employment practices include failing to keep employment documentation, writing improper employee contracts, neglecting to pay employees on time, and failing to implement and enforce proper work procedures.

Unintentional practices can also cause a business to find themselves in a legal quagmire where an employment practice may appear neutral but has a discriminatory effect on a protected group. This can occur in hiring, promotion, training, and development. It makes a lot of practical and economical sense for a business to regularly evaluate its employment practices with their legal advisor to ensure compliance with employment guidelines and laws set by federal, state, and local governing bodies.

6) Understanding and strategizing with your taxes

This plays in with your choice of legal entity when you're first getting started, but it's important to consider the possible tax issues that might affect your business. Do you need to collect sales tax on your products? Do your stock option offerings conflict with IRS regulations? Are there any tax incentives or credits that could save your business money? You should consult with a tax strategist who may be an accountant, a lawyer, or a combination of both.

Notably, not all CPAs and tax attorneys have the skills to evaluate your business to advise and strategize with you. Every business needs a professional not just review the numbers, but someone who will take the time to help them plan for success by mitigating tax obligations. Are you receiving the best tax strategies for your business? Ask your tax advisor how they can help you strategize if they are not currently.

7) Having a compliant website

Sure, there aren't too many people who will stop and read the disclaimer, privacy policy, or terms of use agreement on your company's website, but these pages could protect your business from legal troubles. A good privacy policy informs visitors to your site as to what information will be retained for use by the business and what

won't. A website's Terms of Use outlines how the site should be used and has language to limit liability. A website disclaimer should help clarify points of confusion that could possibly arise for your users. By avoiding use of generic or vague statements — making the language as specific as possible — is a sound practice to better inform website visitors and protect your business.

8) Having a solid support team on your side

Having a business is a big undertaking, and you want to have the right support. It's a good idea to build up a team of professionals you know and trust to help you manage the more specialized aspects of running a business. Consider finding a dedicated accountant to consult on financial and tax matters and strategies; a lawyer for contracts, disputes, and strategy; an insurance professional that knows your business and potential risks you need to anticipate and how to best protect the business; and any other consultant that might benefit your particular business.

If you're looking for a diligent, dependable business attorney who can help you build your team, contact A. Ferraris Law, PLLC. We have years of experience operating a business ourselves and helping businesses like yours get started, grow, and prosper. We work hard to ensure your business is fully equipped with the right legal protections and strategies. [Contact us today](#) to learn more about how we can help you.