Lawyer: Don't wait to be sued

Business owners can save money by forestalling disputes

Fast track

Small firms have more legal issues than they recognize, including:
- Corporate documents
- Partnership agreements
- Employee policies and handbook
- Confidentiality agreements
- Sales contracts
- Building or equipment leases
- Liens, UCC-1s and trust deeds
- Trade secrets
- Trademarks, copyrights and patents
- Vendor contracts
- Loans and other financial agreements
- Independent-contractor relationships
- Nondiscrimination policies
- Job applications and interview questions
- Employee promotions and disciplinary documentation
- Dispute resolution with employees, customers
- General and product liability issues
- Credit check
- Employment and new-customer background checks
- Protection of client lists and information
- Letters of credit

Some phrases become cliché because they're so true.

That thought came to mind regarding "penny-wise and pound-foolish" when Laguna Hills [now Irvine] lawyer John Baker talked about the typical small-business owner's unwillingness to practice preventive law.

Baker specializes in business law such as liens and trust deeds. Often he feels like a member of the bucket brigade trying to douse raging fires. Legal conflagrations are expensive to resolve and rarely benefit a business.

"Wouldn't it be great to stamp out the blazes when they're merely sparks?" he thought.

"It's a proactive look at your business," Baker says, "like going to the dentist before the tooth starts to hurt."

So he talked to many business owners about instituting a program of ongoing risk management and early dispute resolution for the myriad legal issues that arise in running a business.

The lawyer spends a few hours each month reviewing a firm's contracts, leases, policies and procedures before they can lead to multimillion-dollar lawsuits and bleeding ulcers.

Great idea, business owners said. Only a handful were willing to pay for it.

Attorneys like preventive law more than entrepreneurs, which automatically makes some people skeptical. There's even a National Center for Preventive Law, www.preventivelawyer.org.

But with everyone becoming more sue-happy, preventive law can make a business more profitable.

Here's how:

SLOW-PAYING CUSTOMERS

"Many disputes arise because you and your customer haven't come to a clear understanding of the terms of a sale," Baker says. "If you have a sales agreement that's clear, then the customer is clearer about rights of return, when payments are due and what happens if they don't pay."

Also, if a client has no disputes but just isn’t paying you, "a letter from an attorney often gets more attention than from a vendor," Baker says.

ROOTS OF HARASSMENT

"I like to spend time at a client's business, watching how people do their work," Baker says. "If the genesis of sexual harassment is going on, I can put a stop to it."

He also reviews employment agreements and all written policies to make sure they meet standards that will avoid lawsuits if a worker must be laid off or fired.

THE LEASE YOU CAN DO

Boilerplate real estate leases are written to favor the landlord unless the prospective tenant negotiates changes.

For example, the tenant may have to start paying rent before a new building is ready for occupancy. He may be forced to move out if the building is sold.

All such issues are up for negotiation, but many small-business owners don’t read all that small print in the lease, let alone have an attorney review it.

ANTICIPATION: Laguna Hills lawyer John Baker recommends that business owners institute a program of ongoing risk management and early dispute resolution.

It's your business

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