

## **CATEGORY: COMPUTER/IT**

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### **A Legal Check-Up: An Ounce of Prevention is Worth a Pound of Cure**

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In the current economic environment it is more important than ever to be proactive rather than reactive. Any unexpected fine or claim arising from improper procedures or deficient agreements could force your company into the red. One way to help ensure that your business continues to be efficient, productive, and profitable is to undergo a legal audit.

#### **Diagnosis**

In a legal audit, an attorney takes a comprehensive look into the operations of your business to determine if there are any areas that pose risks to be eliminated or minimized. The benefit of a legal audit is identifying legal issues that can be proactively addressed avoiding the costs of having to react after they become problems. A legal audit should be tailored to the specific needs of your business; however, the potential breadth of a legal audit is great. Every legal audit should, at a minimum, address a few key items.

**Business Entity Form.** Your attorney should examine your current business form to determine whether it is still the optimal form in which your business should operate (i.e., corporation, LLC, partnership, etc.). This should also include examining the official records of your company regarding formation and maintenance, including annual minutes and reports, shareholder agreements, and the like. Failure to maintain appropriate records could cause a company to forfeit its privilege to do business within a state.

**Employment Policies and Practices.** During a legal audit, your attorney should examine your company's employment policies and procedures, any employment agreements or non-competes in effect, and your employee handbook. Additionally, Form I-9 compliance and other immigrant employee matters should be reviewed. Child support reporting, employee benefit plans, and workers' compensation risks and procedures should also be examined to ensure your company is in compliance.

**Taxation.** Tax laws change frequently on the federal, state, and local levels. During a legal audit, your attorney should make sure that your company is compliant on each level. The monetary penalties associated with non-compliance are severe and could result in personal liability for you as a business owner.

**Standard Form Contracts.** Have your attorney review any standard customer contract forms, re-seller forms, subcontractor forms, confidentiality and nondisclosure forms, and any other standard contracts utilized by your business. Having proper contracts in place with customers makes a significant difference when it is time to collect. If you have concerns, issues or disputes regarding particular

agreements with existing customers, vendors, or subcontractors, ask your attorney to review those agreements as well.

**Intellectual Property.** Your attorney should review your company's trade secret, trademark, copyright, and patent protection practices. Significant time and money is expended in the creation of intellectual property. Proper protection measures should be taken to ensure that your intellectual property does not become part of the public domain. If you have certain trademarks, copyrights, or patents, ask your attorney to review them as well. If your business collects personally identifiable information whether on its Web site or otherwise, it is prudent to determine if the proper procedures are in place in terms of collecting and safeguarding this information.

Talk to your attorney about a legal audit. Describe your business and provide a detailed description of your operations, so your attorney can design an audit that will address your company's major risk areas.

### **Treatment**

Once your attorney has completed examining your company's operations, he or she will explain what needs to be addressed in order to avoid regulatory fines or penalties and to minimize any potential claims or litigation. If your attorney uncovers areas where the risk of adverse action is high, he or she should communicate the severity of the issue, the potential consequences if the issue is not addressed, and the steps that can be taken to alleviate the risk.

### **Prevention**

One of the benefits of undergoing a legal audit is the ability to create a compliance plan on a going-forward basis that will allow you as a business owner to stay on top of any risk hotspots. Staying compliant and aware of potential legal issues requires vigilance. After a comprehensive legal audit, it is much easier to put procedures in place to consistently examine these same issues with the focus of continued compliance.

Everyone knows the old adage, "an ounce of prevention is worth a pound of cure." In the legal sense, nothing is more true. The costs and time needed to deal with claims or litigation and the potential for fines or penalties far exceeds the costs and time it takes to proactively examine and address the various legal issues your company may be facing. And at the conclusion of a legal audit, you have the benefit of understanding how to be compliant and what procedures to implement to ensure your continued compliance. During this tumultuous economic time, continued diligence and effort are helping companies weather the storm. Being proactive with your company's legal health is another measure that can ensure your company's continued success.