

Protecting Your Company's Legal Health

Introduction Avoid Problems with Preventive Law

Smart business owners and managers reduce costs and avoid legal problems with preventive law practices. With the help of their lawyers, businesses can avoid disputes, injuries, and damage claims and can help strengthen their defenses when lawsuits are unavoidable.

This pamphlet will introduce you to the value of legal checkups, legal handbooks, contract strategies and litigation strategies. Your lawyer will help you to adopt the strategies that apply to your business. Preventive practices should be much less expensive than legal problems down the road.

Legal Checkups Detect Problems

Legal checkups—or legal audits—are something like an accountant's financial audit or medical examinations given by a physician.

During a legal checkup, your lawyer examines business records and practices and recommends steps that you can take to protect the legal health of your business. In a typical legal checkup, your lawyer will review documents such as your corporate charter, corporate minute book, purchase order forms, sales contracts, employment agreements, and loan agreements. Afterward you may get a written report summarizing findings and recommendations. An audit may uncover legal problems that should be corrected. For example, it may reveal that the company should revise sales contracts to limit warranties and liabilities or revise its employment applications to preserve the right to fire unsatisfactory employees.

Besides a written report, your lawyer can meet with you to explain the audit findings and recommendations and tell you how to avoid potential legal problems. At the meeting you can also learn which problems need immediate attention and which ones are less serious.

Legal Handbooks Ensure Compliance

Legal handbooks inform business owners and managers about the laws governing their day-to-day activities and help companies comply with state and federal regulations. They usually summarize the law and contain compliance checklists. Compliance failures can result in bad publicity, distracting lawsuits, and costly fines. Your lawyer can recommend inexpensive legal handbooks that are available from local bookstores.

A typical handbook is about 100 pages long and provides practical guidance on how to comply with the law. Some handbooks concentrate on one legal subject—such as legal restrictions on product pricing—while others cover several subjects. The most popular legal handbooks cover areas that can be hazardous to a company's legal health—compliance with antitrust, consumer protection, labor, and product liability law.

The handbooks are intended as reference guides to be kept handy on desktops and credenzas. Some companies distribute legal handbooks to all employees while other companies limit distribution.

Contract Prevent Legal Problems

Contracts provide an important opportunity for you to prevent legal problems. Your lawyer can help you to negotiate contracts that will protect your rights and help you avoid disputes with your suppliers and customers.

For major equipment purchases or when buying a business, your lawyer can help you prepare a letter of intent that avoids unintended liabilities. Letters of intent are frequently used when negotiations are just beginning to document the basic terms of the business deal and to simplify further negotiations.

A carelessly drawn letter of intent can subject your company to damaging lawsuits. It is important to consult your lawyer before signing a letter of intent to protect your bargaining position in later negotiations.

After negotiations have been completed, it is important to carefully prepare and review contract documents to confirm that they reflect the business deal. It is also important that the contract documents cover contingencies that may not have been discussed during the negotiations. At a minimum the contract should contain "preventive" provisions like remedies for default, procedures for handling disputes, provisions limiting your liability, and provisions indemnifying your company against injury and damage claims. Your lawyer can help you to review your important contracts and contract forms to assure that they protect your company against legal problems.

Other Legal Strategies That Minimize Litigation Risks

Your lawyer can help you take steps to reduce the likelihood of lawsuits and win lawsuits that are unavoidable. To help you avoid lawsuits, your lawyer can recommend various procedures to be followed by managers and rank-and-file employees. Your lawyer may either undertake the company-wide legal checkup mentioned above or just concentrate on areas which present the greatest legal risks such as the hiring of employees and the sale of goods and services.

Other procedures protect your company when disputes are unavoidable. For example, your lawyer can help your company adopt proper procedures to take upon receiving legal documents. Your lawyer can also provide you with checklists of "do's" and "don'ts" for handling disputes. Checklists can be prepared for various situations—when a business deal goes sour, when an employee is injured, when a customer complains about a product or service, or when a government investigator calls the company.

Spotting Legal Trends That Affect Your Company

Your lawyer can help you to spot trends and changes which may affect your company so that you can use them to your advantage. Advance knowledge of trends enables you to increase revenues and control expenses.

On the revenue side, business laws are sometimes liberalized or enforcement relaxed, sometimes opening strategic opportunities for businesses. For example, a liberalization of the Federal communication laws in the 1980's broke the monopoly of AT&T and the Bell Telephone companies. This change enabled many small businesses to offer new products and services, including telephone equipment and long distance telephone service. The products and services enabled entrepreneurs to earn additional revenues and gain new customers that used to be captives of AT&T and the Bell Telephone companies.

On the expense side, toughening of laws and tightening of enforcement may lead to unexpected costs. For example, in the 1980's Congress eliminated many of the tax incentives and benefits that had been available to businesses. Also, the IRS tightened enforcement of the regulations assessing tax liability on companies that improperly classified employees as independent contractors.

Your lawyer can advise you about "positive" and "negative" trends so that you can take appropriate action.

Legal Areas To Watch

To focus your preventive efforts, consider the following list of laws to watch:

- Antitrust laws • Consumer protection laws • Labor laws • Product Liability laws

When these laws change, your lawyer can help you to think preventively, show you strategic legal opportunities and suggest remedial steps to reduce legal expenses.

Conclusion

Preventive legal practices pay for themselves by helping you to avoid legal problems, reduce legal risks, and recognize strategic legal advantages.

Your lawyer can help keep you out of court and defend you against unavoidable lawsuits. To protect your legal health, remember to consult your lawyer when contemplating business ventures, entering into agreements with suppliers and customers, and when developing policies for personnel, sales and purchasing matters.

Preventive Law Checklist

Benefits of preventive practices

- A. Avoid violating laws
- B. Benefit from legal trends
- C. Improve public relations and reputation
- D. Protect officers, directors and managers from liability

Legal checkups

- A. Frequency—at least annually
- B. Topics
 - 1. Antitrust compliance
 - 2. Compliance with consumer protection laws

Use of printed forms

- A. Sales agreements
- B. Purchase orders
- C. Office, shop and warehouse leases
- D. Equipment leases
- E. Credit applications
- E Warehouse receipts
- G. Employment contracts
- H. Distributorship agreements

Compliance

- A. Written guides to policies and procedures

- 3. Compliance with labor laws
- 4. Avoidance of product liability
- C. Checklists
- D. Questionnaires
- E. Interviews
- F. Inspections
- G. Examination of files
- H. Monitoring of compliance and programs

- B. Compliance calendars
- C. Monitoring legislative and judicial developments
- Training and Education**
- A. Legal handbooks for managers and supervisors
- B. Legal newsletters
- C. In-house workshops
- D. Seminars and videos

This pamphlet provides general information. Laws develop over time and differ from state to state. This pamphlet does not provide legal advice about specific legal problems. Let us advise you about your particular situation.

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