

# Tips to Prevent Litigation with Employment Contracts

Article

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For a business owner, nothing is more exciting than seeing your business succeed and grow out of little more than a personal passion. During this expansion, outside help becomes a necessity, and delegation of tasks becomes routine. Throughout this exciting and often hectic period, business owners often overlook formalities as they try to manage the day-to-day operations of their rapidly growing business.

We are frequently contacted by clients and prospective clients after their business has been damaged by employees or former employees or are facing the threat of litigation from a former employee or contractor. Although there are always options available to businesses facing these issues, considerable time and costs could be avoided if business owners take proactive steps before facing the prospect of litigation.

## **Avoid Relying on Oral or Informal Arrangements**

I regularly receive calls from business owners in a dispute over employee or contractor payment where one party believes they are entitled to X and the other believes they are entitled to Y. One of the first questions I ask is whether there was any sort of memorialized agreement defining payment terms. Far too often, the answer is no. The payment terms were made orally or in a series of text messages or emails over several months. In the event of litigation or potential litigation, this makes things increasingly difficult. It becomes a matter of “he said she said” with both sides putting forth extrinsic evidence in all shapes and forms. Before being faced with this problem, put it in writing so that both parties are clear as to when, how, and how much they will be compensated.

Likewise, do the same with job descriptions and responsibilities. Owners often assume an individual is managing an aspect of the business when they are not and important things, like filing taxes, fall through the cracks resulting in substantial costs to the business. This can be avoided with a comprehensive written description of each individual’s duties and responsibilities.

## **Consider How Employees are Classified**

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Employees and independent contractors are two very different things, and simply designating someone as one or the other does not necessarily make them so under the law. Consider how you would like to categorize that individual as well as how you intend to treat them. Then, consult with an attorney to ensure you are acting in a manner consistent with the law to avoid owing back benefits or other legal issues down the line.

### **Consult with an Attorney to Draft Relevant Documents**

A comprehensive employment agreement can address compensation, benefits, job description, and termination, and protect your business from employees infringing on intellectual property rights, stealing confidential information, and other general harm. Having an attorney draft or review these agreements is a crucial step in ensuring an agreement not only accomplishes what you would like it to but also is enforceable under the law.

Non-competition and non-solicitation provisions are invaluable in preventing former employees from pulling customers away from your business and utilizing the skills they developed while working for you for the benefit of one of your competitors. These restrictive covenants, however, are highly scrutinized by courts, often leading to them being unenforceable altogether. These standards are variable based on the business type and market. An attorney will be able to draft and/or review your restrictive covenants to ensure yours meet the requisite legal standards to be enforceable.

In addition to employment agreements, consider drafting an employee handbook laying out your various policies. This is another way to ensure you and your employees are clear on your expectations as a business owner.

### **Update Your Agreements**

As your business grows and changes, make sure your agreements and policies do as well. Do not continue to rely on dated agreements and policies. Make sure you review and update your employment documents regularly to make sure they are still compliant with the law and your current business practices.

### **Ensure Your Employees are Bound by Any Agreement**

An employee agreement is a contract, which requires consideration to be a valid, enforceable contract. The simplest way to accomplish this is to have your employees sign these agreements before employment. However, if you are implementing a new agreement or updating an existing one, it is critical you offer some form of incentive to your employee in consideration for them agreeing to it. If you do not do so, the agreement cannot be enforced.

Inevitably in business, you will be faced with employee disputes and potential litigation. If you consider the above steps, when you are faced with such disputes, you will be in a better position to protect your business and prevail in

litigation, if necessary.

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