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"We Make Business and Estate Planning Simple."

ICS LAW BRIEF

INSIDE THIS ISSUE:

- 1,2 *Avoid Litigation, Use an Attorney*
- 2,3 *Protect Your Business, Stop Employee Discrimination and Harassment*
- 4 *Guest Corner: Willa Martin Bailey*

Note: The information contained in this newsletter is for general technical guidance and is not intended for specific application. This newsletter is not intended to be legal advice and should not be used as a substitute for legal consultation. If legal advice is needed, independent legal counsel should be sought.

Avoid Litigation, Use an Attorney

By Gaylord Gardner

The cost of a lawsuit, not just in terms of money but in time, most often far exceeds the cost of avoiding a lawsuit. A little time and money spent on prevention can save a business a great deal of time and money in the long run. It is at these times that a well-developed relationship with an attorney can be a valuable resource to your business.

Develop the Relationship

The first step in developing a relationship with an attorney involves meeting with your attorney in order to discuss how your business works. A complete understanding of your business will allow your attorney to point out the risks associated with your business and to help you avoid those risks. Furthermore, it will better enable your attorney to update you as the laws and regulations that affect your business change.

Seek Advice

Having established a relationship with an attorney, continue to seek advice. Many risks occur when a novel situation requires a business owner to make a decision without understanding all the

legal issues related to that decision. Being able to discuss the pending decision with your attorney can help you avoid some of the potential pitfalls associated with your decision.

Since your attorney already knows your business, he or she will be able to provide you with advice regarding how a pending decision will affect your business. While some decisions may be complex and require a lengthy in person discussion, others may be simple and only require one quick phone call. Whether the decision is complex or simple, you should always take time to discuss the decision with your attorney.

Get Contracts Reviewed

Don't overlook one of the major benefits of having a relationship with an attorney. Ask your attorney to review any contract presented to your business. While your major concern will be money and when it is due, your attorney will be concerned with all the other provisions in the contract. *(article continued on next page)*



Guest Column:

Workforce Development in the 21st Century; Market Shortage of Qualified Candidates

By Willa Martin Bailey

Each issue, we invite trusted business colleagues to write a short article on a relevant topic. This issue's guest is Willa Martin Bailey

In this marketplace today, the best candidates are recruited and simply have better things to do than read the Sunday Wants Ads...

ROI and revenue generation are key to corporations and future employees from several perspectives. To maximize profits the hiring process needs to:

- Produce positive results;
- In a short period of time; and
- Use as few resources as possible

The industry of "human capital" has found that most qualified candidates do not settle for what is available; on the contrary, they generally are able to choose from two or three excellent job offers. The market is no longer a buyer's market.

Corporations need to educate themselves about this type of marketplace and what to

do to prevent losing candidates to other job offers:

- First, a corporation can no longer pursue an attitude of "business as usual," or it will lose the candidate of choice to a competitor;
- Second, a corporation must sell the career opportunity better and show more interest in the candidate or it will lose them;
- Third, a corporation must not burn the second and third choice candidates as they may become its choice to hire

Some companies not following this advice might find themselves starting the entire hiring process over and over again, and in some cases with no hire at all, which is very costly.

Article by Willa Martin Bailey, President
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Our firm aids those who are considering starting a business and assists existing business owners with their continuing legal needs, such as contract review, contract drafting, franchising agreements, and consultation. In addition, our firm specializes in estate planning and management. For additional information or to set up an appointment, please call our office at (615) 224-1290.

Avoid Litigation, Use an Attorney

(Continued From Page 1)

Sometimes you can learn much about a potential business relationship just by looking at that party's contract. Does that party's contract make any guarantees? Does the contract provide a resolution procedure? Does the contract release that party from all liabilities to you? While you form your own impression about the reliability of a potential business relationship, your attorney's review of that party's contract might give you the extra insight you need in deciding whether or not to do business with that party.

Even with the best efforts put towards prevention, litigation over a contract can still occur. In the

event of litigation, the contract usually contains the rules regarding how the conflict will be handled. Therefore, it is important that any contract you sign on behalf of your business not have rules unfavorable to your business. If you do end up in litigation, you don't want to have signed a contract that makes your business the loser before the lawsuit even begins.

An attorney can be a valuable tool to your business. Develop a relationship with an attorney, seek advice, and make sure that attorney reviews any contracts that you enter into on behalf of your business. A little time and money spent now could save you a large amount of time and money in the future.

Protect Your Business, Stop Employee Discrimination and Harassment

By Gaylord Gardner

For most businesses, employees are necessary for success. However, there are many risks that accompany having employees.

- Employees may damage relationships with the clients
- Employees may make poor decisions which cost extra money to correct
- Employees may be injured on the job
- Employees may injure third parties while on the job

Most businesses take measures to prevent these exposures. Nevertheless, one often overlooked exposure involves discrimination and harassment of employees by other employees.

A discrimination or harassment lawsuit can be costly or even overwhelming for a small business. It is not uncommon for juries to award plaintiffs large amounts of money in these types of lawsuits. Therefore, it is imperative every business take specific actions to prevent a discrimination or harassment lawsuit.

Create a Policy

As with any other type of liability, prevention is essential. The first step in preventing discrimination and harassment is to create an anti-discrimination and harassment policy. The policy should not only prohibit discrimination based on race, color, religion,

national origin, age, gender, disability, and other protected classes but should be broad and prohibit any form of discrimination or harassment.

Discrimination most simply is a failure to treat all employees the same. It can be denying a benefit to or placing an extra burden on a certain person or group, such as drug testing only job applicants of a certain race. Additionally, discrimination can be providing special treatment to a certain person or group, such as only promoting employees of a specific religion.

Harassment is conduct that substantially interferes with an employee's work performance or creates an intimidating, hostile, or offensive work environment. Harassment can be racial slurs directed at certain individual or requests for sexual favors by a manager.

Without an anti-discrimination and harassment policy that defines what type of conduct will not be tolerated, a business has few defenses against a discrimination or harassment lawsuit.

Publish to Your Employees

All employees should be aware of the anti-discrimination and harassment policy. If the business has an employee manual, the policy should be included. If not, all employees should be given copies of the policy and required to sign a document confirming receipt of

the policy. Furthermore, a copy of the policy should be posted where all employees will be reminded of the policy. A good place is with the employment posters required under state and federal law.

Create a Complaint Procedure

It is not enough to just have a policy prohibiting discrimination and harassment. The policy must provide employees who feel discriminated against or who are being harassed with a safe method for reporting the discrimination or harassment. The policy must further provide employees with a back up complaint procedure in case the initial complaint goes ignored.

Enforce the Rules!

Even with a well developed anti-discrimination and harassment policy, a business may still face liability if a complaint is not handled correctly. Every discrimination and/or harassment complaint must be treated seriously and should be investigated thoroughly. It is important that all complaints are handled identically. Inconsistent enforcement of the policy can subject a business to liability.

Furthermore, it is essential that no retaliation be brought against any employees making a complaint under the policy. Not only should supervisors be prevented from retaliating, but also other employees. How a business handles the complaint may be the determining factor in whether that business loses or wins a discrimination or harassment lawsuit.

By creating and enforcing an anti-discrimination and harassment policy, a business can protect itself and its employees. An experienced employment attorney will be able to assess a business's risks and help that business draft an anti-discrimination and harassment policy that fits that business.



A discrimination or harassment lawsuit can be costly or even overwhelming for a small business. It is not uncommon for juries to award plaintiffs large amounts of money in these types of lawsuits. Therefore, it is imperative every business take specific actions to prevent a discrimination or harassment lawsuit.



Interested in coming to one of our monthly Iron Clad Shield Seminars? Call ICS Law Group at (615) 224-1290 for more info.