

AM I AT RISK?

Business owners must deal with risks of all types every day. You can take many approaches to containing or limiting risks, but you ignore risk at your peril. Some of the risks that typically confront business owners are:

Premises Liability

A customer slips and falls on your premises and is injured

Automobile Accidents

Your truck hits a pedestrian or vehicle

Negligence

Someone is injured by a service you perform or a product you provide

Tax Liens

You fail to pay sales tax or employment withholding taxes or other taxes

Employment Claims

An employee sues you alleging sexual harassment, race or age discrimination or unfair termination of employment

General Business Risk

Business slows down due to a weak economy or competition from other businesses

Workplace Injuries

An employee is injured while working for you

Each type of risk represents a potential claim against your business assets and possibly your personal assets (including your home and savings) as well. The many solutions to the problem of risk include the following techniques:

Insurance

Insurance can give you protection against premises liability and negligence claims. Business interruption insurance will also give you some protection from losses suffered by reason of a natural disaster or other interruption of business. Insurance coverage is limited to a stated amount and if there are claims against your business in excess of that amount, the business's other assets will be liable. Insurance costs money (premiums) payable on a regular basis. Typical insurance policies are very complex documents that may exclude coverage for many types of claims, and usually have a deductible or exclusion amount which

represents the amount of loss that you must absorb before the insurance company will pay on the policy. Of course, insurance only affords protection as long as you pay the premiums and the insurance company remains solvent.

Entity Formation

Conducting your business through an entity (for example, a corporation or limited liability company) is an excellent way to protect your personal assets from business risks. The entity's assets remain available to creditors, however transferring an existing business to an entity or creating a new business entity is not difficult and affords a

high degree of protection of your personal assets. Of course, you must operate your entity in accordance with the law to get that protection. If you confuse corporate assets with your own or fail to use the corporate name, creditors may be able to “pierce the corporate veil” and reach your personal assets anyway.

Transferring Assets

Many financial advisors advocate placing personal assets in trusts or transferring them to family members as a means of placing them beyond the grasp of business creditors. Some of these schemes work and some do not, and most have many unintended side effects. You must move with great caution in adopting any such plans. For example, you cannot place an asset in trust or transfer it to another person to protect it from creditors without giving up complete control over the asset itself. The laws governing “fraudulent conveyance” transfers also allow creditors to retrieve transferred assets under certain conditions. In general, if you transfer an asset to protect it from a specific claim of a creditor, the auditor will be able to “undo” the transfer and reach the asset. For business

owners who choose this course, it is essential to be properly advised, to integrate your plans with competent estate planning and tax advice, and to move the assets well in advance of any anticipated claims.

Training

Training of employees and managers can avoid a variety of risks. Training can include safety training (to avoid workplace accidents), sensitivity training (to avoid creating employment discrimination or harassment claims), and corporate operations training (to minimize the risk that creditors will be able to “pierce the corporate veil”). Employee training should be conducted for all new employees, and existing employees should have refresher training periodically.

Employee Manual

A comprehensive employee manual can dramatically limit your risk of employee lawsuits. A poorly drafted manual, or one which exists but is not followed by your staff, can be more of a hindrance than a help and may create rights that the employees might not otherwise have.

A comprehensive solution to the problem of business risk involves a combination of the above techniques. At Wilentz, Goldman & Spitzer, P.A. our experienced business and litigation attorneys can provide you with insight, advice and action to protect your business assets and personal assets as we have been doing for businesses of all types for ninety years. If a problem does arise, we have litigation, workers' compensation and employment law specialists who are ready and committed to helping resolve them. It is our goal to see you succeed and to earn a long-term relationship with you.



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