

Legal Protection for Home-Based Businesses

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In today's highly litigious society, legal experts agree that when it comes to protecting your small business, an ounce of prevention is worth much more than a pound of cure -- it may be worth your entire business. And home-based businesses are no exception.

"Today's [home-based] business owners are going to face the same liabilities as other businesses," says Marcus Raynor, executive director of the *New Jersey Lawsuit Reform Alliance*. "There's no distinction in exposure to litigation. Lawsuits can change or even shut down a small or home-based business overnight."

If you're serious about protecting your business, abide by these three important rules, and take note of the following true stories of home-based business owners who learned these lessons the hard way.

1. Have an ironclad contract in place. Ken, a service provider, works from his home office in New York finding positions in rehabilitation facilities for certified counselors. The individuals Ken places aren't his employees, but freelancers and independent contractors. Nonetheless, one of the individuals Ken placed in a part-time position filed a suit against him to claim unemployment benefits.

"What saved Ken was his contract, which was ironclad," says his attorney, *Tatia Barnes*, whose practice specializes in preventive legal counseling. "I helped write the contract with my client and even went to the IRS website to make sure the contract clearly explained that these were not full-time employees," Barnes says. Responding to the New York Department of Labor, she was able to successfully argue that the employment relationship was that between a service provider and an independent contractor.

"I can't stress enough the importance of taking the time to have a contract tailored to meet your specific needs," Barnes says. She warns home-based business owners not to cut corners by using generic boilerplate contracts or to assume that because they are a one-person operation that a simple "handshake agreement" will suffice.

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2. Don't negotiate or settle without a careful review. Mark P. runs a Florida-based shipping business from his home. His company coordinates the shipping of products from suppliers to customers. Without trucks or warehouse facilities, he is the classic "middleman." Mark was sued for \$65,000 by one large shipping company, which claimed he had failed to pay for the costs associated with some of the shipments he was managing. Mark told his attorney that he had lost some accounts and was having problems with vendors, but he knew he didn't owe as much as \$65,000.

Daniel F. Mantzaris, Mark's attorney and a partner in the law firm *deBeaubien, Knight, Simmons, Mantzaris & Neal, LLP*, reviewed all of the documentation associated with the shipping costs to accurately assess what Mark actually owed. Because the amount claimed by the shipping company was much higher than the amount actually owed, Mantzaris countersued on behalf of his client. "At the end of the day, we negotiated and got the \$65,000 shipping bill down to about \$10,000," Mantzaris says, adding that business owners must review everything carefully before agreeing to any type of settlement.

A similar lawsuit in Minnesota involved a large shipping company suing a one-person shipping business for \$100,000 because of a trucking accident. Fortunately for the small business owner named in the lawsuit, he was able to prove that he had played no role in coordinating the transaction. As his attorney said after the case was dismissed, "Sometimes people are just looking for someone to blame."

If your small business comes under legal fire, carefully review the case before considering any settlement or negotiating. Whenever possible, get solid legal counsel.

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3. Never underestimate the need for a warning. When a commercial real estate broker asked Jolene, a real estate agent, to show a commercial property, he made it clear that the property was in the process of being renovated. Jolene passed the warning along to the prospective renter, who still insisted on being shown the property. As the two women navigated the facility, Jolene told the prospective renter to be careful on the stairs, which were not yet completed. Despite the warnings, the woman fell. She later sued Jolene over injuries she sustained as a result of the fall.

While Jolene's case is still pending and her attorney cannot comment, the issue of proper warnings and safety is a serious one. "In today's litigious society, you always have to err on the side of caution and realize that any potential activity you're involved in could be the subject of a lawsuit," says Bob Dorigo Jones, senior fellow at the *Foundation for Fair Civil Justice*. He says that a "caution" sign prominently placed on the outside of the property might have served to warn visitors that the site was potentially dangerous.

Unfortunately, for now it's Jolene's word against the woman's as to whether Jolene gave sufficient warning beforehand. "[This case] shows why everything has to be in writing these days," says Dorigo Jones, who blogs about how to protect yourself against frivolous and excessive lawsuits.

Review your business for potential weak spots that could make you vulnerable to litigation. And remember -- when in doubt, get it in writing.

Legal Service Providers Can Offer Affordable Protection

So how else can home-based business owners make sure they're protected from these kinds of disastrous scenarios? For many, hiring an attorney can seem cost-prohibitive, but there are other solutions available. Many small businesses, for example, use group legal service providers such as **Pre-Paid Legal Services Inc.**, which provides legal services to individuals and independent business owners for a small monthly fee. Business insurance is also a necessity for all business owners, including those working from home offices. The **National Association of Insurance Commissioners** maintains a **website** devoted solely to home-based business insurance issues. It covers topics ranging from property and liability coverage to business interruption insurance.

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