

SCORE Webinar

Business Law: LLCs, Contracts, & Hiring People

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Organization

- First step to protecting yourself and your business
 - Liability shield, which keeps personal assets safe
 - Privacy, as you can contract without ever using your name
 - Business banking
 - Personally shielded from creditors and debts of entity

When?

- Consistent transactions: the more transactions, the more potential for a dispute and the more necessity for liability protection.
- High liability business: if you are doing or selling something risky, the chances of liability are higher and the more reason for you to have the protection in place.
- Employees
- Revenue

Which Kind?

See entity chart

How?

Partnership:

- Certificate of partnership
- Partnership agreement

LLC:

- Articles of organization
- Operating agreement
- EIN

Corporation:

- Articles of incorporation
- Bylaws
- Contracts between shareholders

Contracts

Purpose

- Explain the relationship
- Detail the process in case things go perfectly
- Detail the process in case things go horribly
- Limit liability when necessary
- Protect business interest

Client/Customer Contracts

- Most important relationship, so you don't want surprises or disappointments on either side
- Outline the terms of the arrangement (price, time frame, product/service selling).
- Limit liability in case of damage, injury, dispute, etc.
- Make sure you get paid; include collection provisions if client/customer does not pay.
- Protect your intangible assets; your company has information (client lists, pricing, strategies) and intellectual property (content, branding) that you should keep safe.

Vendor Contracts

- We all need to contract with some other businesses to make ours run smoothly, even if it is comcast for our internet. We need to take these contracts seriously. Some of us rely on relationships for the success of our business but have no formal written document describing that relationship (supplier, manufacturer, distributor, affiliate, etc.)
- Outline the terms of the agreement (what they are providing and their responsibilities, as well as yours; price; and time frame)
- Limit Liability: you aren't responsible for their failure; they are responsible if their failure hurts your business.
- Show clear entrance and exit to relationship: you need to keep everyone in if it's going well to add assurance to the arrangement, but also allow for an escape route if the relationship is failing.
- Protect your intangible assets: if something is created during the relationship, who owns what? What information does each party have access to and what are they allowed to do with it (during the agreement, after)?

Leases

- Whether you are leasing equipment or space, to or from someone, the lease is the sole governing document.
- Outline the terms of the lease (space, equipment, rules, time frame, rental price, utilities, damage, late fees, how to get out, etc.)
- Limit liability and require them to cover liability related to their negligence or damage caused when they have possession.
- Make sure you get paid if you are the lessor and make sure you get the space/equipment you need if you are the lessee.

Hiring People

Employee (W2) vs. Independent Contractor (1099)

- You have two options when bringing on help:
 - An employee is someone who is on the company's payroll – they are part of the organization.

- An independent contractor is on his or her own – they are not part of the organization and maintain a business-to-business relationship with the organization.

Which one do you choose?

- Proper categorization is imperative. If you are not categorizing properly, you could get into trouble with the IRS. In the event you should have been categorizing as a W2, the IRS can require that you pay all backed employment taxes from the date the worker was “hired.” This is an expensive mistake.
- Determining 1099 vs. W2 is less like a one or the other calculation and more like a scale. The more it looks, feels, sounds, and acts like an employee, the more likely the IRS will be unhappy if it is not categorized as an employee.

How do I hire a worker?

- Regardless of the categorization, some documentation will need to be completed in order to properly hire someone. In either event, you need a contract. This is important not only to outline the terms of the relationship, but also protect the company’s information, IP, as well as restrict employee behavior that would be damaging.
- 1099’s require specific paperwork to be completed.
 - Initially a W9 will be needed to collect the tax information necessary. Later, if the 1099 has been compensated more than \$600, a 1099 will need to be issued (usually an NEC or MISC), which indicates the amount that has been paid.
 - Your contract should indicate how the contractor is to be paid. Typically, the best scenario is one whereby the contractor invoices your business and you pay according to the invoice. You will need to make sure you have this system down so that payment is timely.
 - You should also have policies and procedures that are relevant for the work, if necessary. Often, if a company is hiring contractors on a regular basis, the company will provide them with an independent contractor handbook or independent contractor policies.
- An employee (W2) also requires paperwork to be completed.
 - The initial forms include an I-9 and W-4 to collect the information necessary. You will also issue a W2 during tax time so that the employee can report their income.
 - You will need to set up a payroll system, which will withhold taxes on behalf of the employee (you will also need to do other tangential tasks, like pay unemployment insurance).
 - You should have a handbook to regulate employee relationships, implement policies and procedures, and outline expectations and rules.