

Employment-Related Tips For New Businesses

Establishing a new business, or buying an existing one, is an experience which can be rewarding and productive. It can also be painful and costly.

For people who are new to business, or new to the concept of hiring service providers (employees or independent contractors), knowing some legal and practical basics will go a long way towards ensuring the experience is a happy one.

1. **Get to know B.C.'s *Employment Standards Act*.** The *Act* is the baseline of all employers' obligations (unless your business falls in the federal realm) towards employees and is mandatory knowledge for new employers. Your employment lawyer and accountant will assist you with these topics, but obtaining a working knowledge of rules relating to payment of wages, calculation of overtime and vacation pay, paying statutory holiday pay, etc. is absolutely vital.
2. **Decide whether your service providers will be employees or independent contractors.** This is one of the biggest, most impactful decisions you will make as a business person. Incorrectly categorizing your service providers – or not abiding by that characterization - creates potentially huge liabilities which will likely be impossible to avoid after the fact. Carefully considering the benefits and risks of using one category over the other in any given instance is a vital step - don't allow yourself to fall into the "independent contractor trap"!
3. **Use proper agreements when hiring employees and contractors.** This is the #1 piece of business advice I give to new (and old) businesses. There simply is no other step which you can take in your business which will have the same beneficial impact on structuring your relationships and protecting you against resulting litigation. If you do nothing else right, do this right – put properly drafted contracts in place for all of your service providers!
4. **Get agreements signed *before* the relationship commences.** Perhaps the most common error I see businesses trip over – aside from not implementing contracts at all – is asking the employee or contractor to sign the agreement after the commencement of the relationship. This crucial error usually renders the contract unenforceable and is a bitter pill for the business to swallow (after thinking, sometimes for many years, that it had been diligent in putting contracts in place).
5. **Use Application Forms.** The humble application form is one of the most useful, *and underused*, tools in the employer's toolkit. A properly assembled application form tailored for your business setting will ensure consistent gathering of useful and relevant information and is the first step towards ensuring your employment relationships are properly structured and your service providers are actually people you want to have in your business.
6. **Avoid so-called "defined term" relationships.** Businesses often seek to engage both employees and contractors on a "term" basis (ie. a period of time which expires at some defined date in the future). My experience has been that, unless the business truly intends to employ/engage that person only for that

specified period, defined term relationships are a trap which can create substantial (unforeseen and unwanted) liability.

7. **Avoid imposing restrictive covenants on employees and contractors.** It's very tempting for business people to presume that they have something special which requires protection from departing employees or contractors. For the most part, they don't (except for existing client relationships). When employers do seek to obtain that protection, they impose a "covenant", which is an ongoing restriction on the employee's post-employment activities. Use a "less is more" approach to imposing covenants and, in most cases, stick with a simple restriction against soliciting your clientele for a reasonable period of time.
8. **When purchasing a business, understand what liabilities for employees/contractors you may be inheriting.** Most purchasers of businesses don't seem to know or understand that buying a business can (and usually does) bring with it substantial inherited liabilities relating to the existing employees and contractors. Limiting – or eliminating – those liabilities is a good way to get started with your newly acquired business.
9. **Learn how to properly structure commission pay arrangements.** New employers are often attracted to the concept of paying service providers on a commission basis. After all, paying only for performance can be a great arrangement. A big, big mistake often made, however, is that the specifics of the commission structure are left very, very vague. This lack of precision often comes back to haunt the business when the relationship (employment or independent contractor) is terminated.
10. **Establish a relationship with an employment lawyer.** My experience has been that businesses which have an established connection with an employment lawyer – not a general practitioner – end up spending far less money on legal fees and in fighting lawsuits in the long run. A telephone call before a situation blows up is well worth the investment. As they say, an ounce of prevention is worth a pound of cure!

It is always important, and well worth the investment, to have any agreements/contracts relating to the operation of your business drafted by a qualified, experienced lawyer. Employment and contractor agreements/contracts (and related documents) are no different. Get it done properly at the outset and you'll be glad you did.

There is much, much more to know about the legalities of your relationship with your service providers. These 10 tips can, however, get you off to a great start and headed for relationships which don't end unhappily in statutory complaints and litigation.

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Smithson
Employment Law Corporation

306-1500 Hardy Street, Kelowna, B.C. V1Y 8H2 | Phone: 778-478-0150 | Fax: 778-478-0155
www.smithsonlaw.ca