

LEGAL EXPERTISE



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Beyond the idea: Setting up your new business in New Hampshire

by Angela B. Martin, Esq.

Congratulations! You've come up with a plan for starting your dream business. But having the right idea for launching your business is only the first step toward success. Here are some important issues every business owner needs to consider when getting started.

Selecting Your Business Entity and Formation

When forming your new company, it is important to be cognizant of all of the entity forms that are available to you, including the sole proprietorship, general partnership, limited partnership, limited liability company, and corporation. Your attorney can help you understand the specifics of each of these options and help you choose the entity that suits your needs the best. Once you have selected the type of entity that best suits your business objectives, you must file the requisite formation documents with the New Hampshire Secretary of State. You must also make appropriate filings in any other state where you do business. A direct discussion with your attorney can send you in the right direction for your company.

Owner Agreements and Entity Maintenance

It is not uncommon for the owners of a business to assume they all share a common vision for the company's operations. By taking the time at the outset of forming your business to execute a written agreement that clearly sets forth the rights and obligations of each respective owner, you can insulate your business from undesirable circumstances.

And just as maintenance of your client base requires ongoing attention, so too does the maintenance of your business entity. You will need to make annual filings with the Secretary of State, pay all annual filing fees, and, in some cases, hold annual meetings. Failure to do so can affect your company's status and its ability to properly conduct business.

Business Contracts, Insurance, and Leases

As a business owner, you will come into contact with contracts of all different types. There are a number of principles that you should be aware of to be sure you understand the obligations and risks from contractual relationships. One key principle is that contracts can be written or oral and do not need to be contained in one document. Having as complete an understanding about each party's rights, responsibilities, and risks at the beginning of the business relationship is always the best course of action.

Having a standard set of contracts for your business to use with customers and vendors can be extremely cost-effective and helpful for conducting business on a day-to-day basis. And in the event of a contract breach, having rights and remedies spelled out in a contract may greatly reduce the amount of time an attorney may need to help you resolve disputes.

Understanding the forms of insurance your business will require is another important consideration. Protecting your investment through appropriate insurance coverage is not only a wise step, but in some cases is mandated by law. Your attorney can help you understand the types of business insurance that is available to small businesses, as well as those that are required versus those that can be covered at a later stage of the life of your business.

Leasing is a third important decision that can have a substantial impact on business operations—one that must weigh the future need to expand or relocate with the current need to contain costs related to leasing unnecessary space. A balance between the two is essential. Common issues to be outlined in leases include parking spaces, construction, taxes, landlord defaults, maintenance and repair, access by the landlord, extensions and expansion, and damage to the building. Small businesses want to ensure they are not caught off guard by a lease agreement that is not properly drafted or which contains adverse provisions.

Hiring Employees and Other Key Issues

Some final important considerations for new businesses are the conditions and requirements for hiring workers as employees or as independent contractors. These include New Hampshire wage and hour laws, unemployment laws, workers' compensation laws, federal tax laws, and other common law tests used to determine whether an individual is subject to federal employment laws. Improperly classifying an individual as an independent contractor versus an employee can result in the imposition of penalties and fines for violating federal or state employment laws. Such penalties can be steep. Setting up employees' status properly can avoid having to pay for classification errors.

Other matters that new businesses must consider include such issues as taxes; protecting intellectual property; patents, trademarks, and copyrights; raising capital; real estate; and environmental issues.

Devine Millimet's no-fee Business Launch program can help New Hampshire businesses take the first important steps in getting started on the path to success. Contact us via our website for details of this important program: devinemillimet.com/businesslaunch.

Angela B. Martin, Esq. is chair of Devine Millimet's Small Business Team. Her practice is focused primarily in the area of general business law with a specialty in mergers and acquisitions. She advises closely held and family-owned businesses across a variety of industries including financial, retail, high-tech, medical, manufacturing, and hospitality. She counsels her clients in numerous practice areas, including entity formation and governance, contract drafting and negotiation, debt and equity financing, succession planning, employment and compensation arrangements, and mergers and acquisitions. Contact Angela at amartin@devinemillimet.com or 603-695-8527 to learn more about Devine Millimet's no-fee Business Launch program to help get your business up and running in New Hampshire!

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