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## Avoid Legal Time Bombs

Learn whether your business is vulnerable to getting sued. Find the holes in your business, and stop lawsuits before they start.

By Patrick A. Fraioli Jr. | November 06, 2008

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If you own a business in the U.S. long enough, there's a strong likelihood that your business will be sued. When that happens, it will cost you a fortune to defend that lawsuit. And that's if you win.

So as a business owner, it's your responsibility to do something about it *before* it happens to you. For example, if you were afraid of a fire in your home, you'd ask a fire fighter for fire prevention tips. If you were worried about having a heart attack, you'd consult your doctor about preventive medicine. So it's only rational that if you're living in fear of being sued (and losing), you should ask a lawyer how you can improve the odds that you'll not only win, but also avoid a suit entirely. It's called "litigation avoidance" or "preventive lawyering."

An experienced litigator who focuses on litigation avoidance can help you find the "legal time bombs" that may be ticking in your business. A few examples follow:

**Employment law** is hot, particularly "wage and hour" suits, involving how employees are classified, what they're required to do, and how and when they're required to do it. It's a business nightmare. The traditional mainstays of employment litigation include wrongful termination, discrimination in hiring and/or firing and sexual harassment. This has all become big business for plaintiffs' lawyers, and thus every business in America is a potential target. Have experienced counsel audit your employment practices and advise you if and where there are ticking time bombs.

**Intellectual Property (IP)** is another hot area. Businesses can profit from having an IP attorney audit business practices for two reasons: to find out if you may be infringing someone else's IP and also whether you may have some IP you don't even know about (eg., a trademark). It's especially important to follow strict procedures to protect any trade secrets you own, so that when a former employee tries to misappropriate them, you can stop him cold. But you can do so only if you've prepared for that fire *before* it starts.

**Contracts Management**--Every business has contracts, and they contain obligations. Often, those obligations can make you a fiduciary, such as where you are holding and distributing money for others, as happens in businesses that employ subcontractors. Fiduciaries are required to act with the highest degree of loyalty and care. But often, particularly when a business is growing rapidly, employees with knowledge of these obligations will leave. Unless you have specific procedures in place to ensure the transition of this knowledge, new employees may default on the firm's obligations. Serious trouble can follow.

**Electronically Stored Information (ESI)** is everywhere. Every modern business should have a document retention policy. If you don't, or you don't follow the one you have, you may become the butt of those "smoking gun" stories that are passed around, ironically, on the internet. The consequences can be grave. A lawyer can help entrepreneurs decide what kind of documentation policy is ideal for them.

**Fraud** is rampant in American business. More than \$650 billion (or 5 percent of GDP) is lost annually to employee fraud and abuse, with nearly one in four frauds causing loss in excess of \$1 million. Your business isn't immune, and fraud is rarely discovered by someone going over a compliance checklist. Know what to look for and how to implement internal controls to prevent fraud.

There are as many potential ticking, legal time bombs as there are businesses in this country. Look for yours and find them before a potential plaintiff does.

*NOTE: Nothing contained herein may be considered legal advice or counsel of any kind.*

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