

Stay Out of Court: Ten Ways a Small-Business Owner Can Avoid Legal Trouble

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The NFIB Small Business Legal Center is the voice for small business in the courts and the legal resource for small business owners nationwide.

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Litigation Statistics

- U.S. tort system costs over \$260 billion per year – a staggering \$880 per person!
- 70 percent of world 's attorneys are located in the United States
- 94 percent of all lawsuits in the world are filed here
- Small businesses bear significant tort costs

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Rule #1 Incorporate

- Going alone often provides poor asset protection and poor tax benefits
- Be sure to follow corporate procedures
- Have your attorney or accountant review your corporate records once a year

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Rule #2 Know the Law

- Two areas to focus on:
 - ✓ Employment Law
 - ✓ Tax Law

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Rule #2 Know the Law

Employment Law Generally

- Train supervisors on good personnel practices
- ALL employees should be aware of anti-discrimination laws

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Rule #2 Know the Law

Hiring: Immigration Laws

- All new hires must complete I-9s
- Penalties for first-time offenses can range from \$375 to \$3,200 per unauthorized alien
- If your business has established a pattern or practice of hiring illegal workers, you may face jail time



Rule #2 Know the Law

- Section 1: To be filled out by the employee

Section 1: Employee Information (To be completed and signed by employee. Complete one document for each job.)

First Name: Last: First Initial: Middle Initial: Last Initial: Suffix:

Address: (Street name and number) Apt. #: E-mail (Email address) (optional)

City: State: ZIP Code: Social Security #: (If you are a U.S. citizen)

I am aware that Federal law prohibits the employer and the State for false statements or use of false documents by employers with the completion of this form.

I have taken greater care to provide the following:

A correct date of birth

A correct address of the United States for employment

A valid government number (SSN/ITIN)

Another authentic work of the U.S. National ID card (passport, etc.) (if applicable, identification)

Employer's Name: Employer's Address:

Signature and Employer Evaluation: (To be completed and signed by employer. Complete one document for each job.)

Signature: Printed Name:

Business Office Name and Address: City, State, Zip Code: Date Document Signed:

Rule #2 Know the Law

- Section 2: Should be filled out by the employer

Section 2: Employer Review and Verification (To be completed and signed by employer. Complete one document for each job.)

Section 2: (To be completed and signed by employer. Complete one document for each job.)

Documentation	Law A	Law B	AMU	Law C
Copy address:				
Document 1:				
Document 2:				
Document 3:				
Document 4:				
Document 5:				

CERTIFICATION: I am, under penalty of perjury, that I have reviewed the documentation generated by the above named employee, that the above listed documentation appear to be genuine and to confer to the employee named, that the employee began employment on the date indicated, and that to the best of my knowledge the employee is authorized to work in the United States. (These employment agencies will not file this form the employee began employment.)

Signature of Employer or Authorized Representative: Printed Name: Title:

Business Office Name and Address: City, State and Zip Code: Date Document Signed:

Rule #2 Know the Law

Hiring: I-9 Audit

- If you find incorrect information, correct and initial or have employee fill out a new form and attach the old form
- If information is missing, fill in the information and initial and date that section
- Store all I-9s together

Rule #2 Know the Law

Tax Laws

- Keep good records!
 - ✓ Deposit all business receipts in a separate account
 - ✓ Avoid writing "cash" checks
 - ✓ Carefully record transactions you make with your business

Rule #3 Maintain Adequate Insurance

- Read the fine print – guaranteed replacement cost or actual cash value?
- Comparison shop – specialty broker can help assess your industry's unique needs
- Don't be cheap – increase liability coverage, consider umbrella, business interruption, disability, and employment practices liability insurance

Rule #4 Manage Fairly and Wisely

Hiring: At the outset, make good hiring decisions

- Ask candidates to provide written resumes or fill out written job applications
- Also ask for references from prior employers



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Rule #4 Manage Fairly and Wisely

Hiring: The Interview

- Ask lots of questions, but make sure that they're appropriate
- Don't ask questions that could reveal whether the person belongs to a protected group (questions about sexual orientation, religion, race, etc.)
- Don't ask questions about the employee's medical history
- Prepare a list standard of job-related questions to ask all applicants



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Rule #4 Manage Fairly and Wisely

Quick Poll: What Can You Ask In An Interview?

1. Do you have any medical conditions that would interfere with your ability to perform this job?
2. Have you ever been treated for drug abuse?
3. Have you ever been arrested?
4. Are you taking any prescription drugs?
5. Have you ever been a member of a union?
6. Do you have small children?
7. Have you ever filed for workers' compensation?
8. How many days per year were you out sick on your last job?

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Rule #4 Manage Fairly and Wisely

Hiring: Background Checks

- Anytime you make an inquiry into the applicant's past, make sure that you have that person's permission in writing
- Make it clear exactly what information you will be checking so that the applicant is not surprised



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Rule #4 Manage Fairly and Wisely

Managing Well After Hiring:

- Set out expectations for new employees
- Tackle poor performance early
- Enforce company policies consistently

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Rule #5 Prohibit Discrimination

- Be aware of what goes on outside of your workplace
- Can be sued for "hostile" environment – even if you are not personally involved
- Provide all employees with a copy of your company's anti-discrimination policy



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Rule #6 Catch and Correct Wage and Hour Violations

Who is Subject to Fair Labor Standards Act?

- As a practical matter almost *all businesses and employees in the United States are subject to the FLSA* – the federal law governing overtime and minimum wage
- Independent contractors are not covered

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Rule #6 Wage and Hour Violations

Overtime Pay

- All covered employees who are non-exempt from the FLSA overtime pay requirements must be paid at one and a half times the regular rate of pay for all hours worked beyond 40 hours per workweek
- Designating an employee as 'salaried' instead of 'hourly' does not automatically qualify the employee as 'exempt' for overtime pay requirements

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Rule #6 Wage and Hour Violations

Most common FLSA mistakes include the following:

1. Misclassification of employees as exempt or as independent contractors
2. Failure to pay exempt employees on a salary basis
3. "Off-the-clock" and regular rate cases
4. Donning and doffing activities
5. Unpaid on-duty meal periods
6. Denied reimbursements
7. Miscalculated commissions and bonuses
8. Tip pooling

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Rule #6 Wage and Hour Violations

Remember –

You can't agree to break the law!

- An employee may not waive his/her right to overtime pay. (An employer generally may, however, discipline an employee who works unauthorized overtime!)
- No comp time in lieu of overtime
- All hours actually worked over 40 hours in a workweek – no matter the particular day or hour – are subject to overtime pay

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Rule #7 Be Careful with Independent Contractors

AND - breaking the law will NOT save you money (in the long run)

- Conduct regular reviews of independent contractor classifications
- Consider how much control your business has over the contractor

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Rule #8 Watch Out for Those Workers' Comp Claims

- Stop accidents before they happen
 - ✓ Be proactive in training
 - ✓ Report claims immediately
 - ✓ Maintain a drug free workplace
 - ✓ Commit to return to work



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Rule #8 Watch Out for Those Workers' Comp Claims

- Get injured workers back to work:
 - ✓ Remind injured employees that you're committed to return to work
 - ✓ Send job description to physician
 - ✓ Create temporary light-duty assignments

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Rule #8 Watch Out for Those Workers' Comp Claims

- Avoid Fraud – watch out for:
 1. Disgruntled employee
 2. Employee on leave being hard to reach
 3. New employee
 4. No witnesses to accident
 5. Varying accounts of accident
 6. Accidents on Fridays or Mondays

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Rule #9 Hire an Attorney

- Interview two or three attorneys before selecting
- Don't be afraid to ask for clarification
- Don't sign anything until you have had time to review and ask questions



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Rule #9 Hire an Attorney

- How do I keep costs down?
 - ✓ No unnecessary calls
 - ✓ Be organized
 - ✓ Require authorization for expenses exceeding \$200; ask for receipts
 - ✓ Meet quarterly to compare case progress with budget

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Rule #10 Get It In Writing

- Institute a document retention policy
- A good document retention policy will promote efficiency, save valuable computer and physical storage space, and protect your company in the event of litigation

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Rule #10 Get It In Writing

Keep good records!

- ✓ Keep tax-related records for at least eight years
- ✓ Retain employee records (under lock and key!) for term of employment plus five years
- ✓ OSHA logs should be retained for five years



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NFIB Resources

Handbooks available at NFIB.com/legal or by
calling 1-800-NFIB-NOW

- Guide to Wage and Hour Laws
- Model Employee Handbook for Small Business
- Small Business Guide to Document Retention

NFIB's FREE Employment Law Hotline

866-678-NFIB

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Conclusion

- Lawsuits hurt small business owners, new business formation, and job creation
- Assess your risks to help minimize your liability exposure



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We want to hear from you!!

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