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How to Resign, Start A Business And Avoid Legal Issues

If you plan to resign and start a business, ensure your small business complies with the law to avoid getting sued and avoid future litigation.

By Oscar A. Gomez

The unprecedented churn in the U.S. labor market, a.k.a. The Great Resignation, that started in 2021 is still among us. If you plan to resign and start a business, ensure your small business complies with the law to avoid getting sued and avoid future litigation.

Step 1. Ensure you're not in violation of pre-existing contracts

Since it is likely that you signed an employment contract with your previous employer, it is highly advisable to you review that contract prior to starting any new venture.

The employment contract may contain non-competition, non-solicitation, or non-disclosure provisions that may survive the termination of that contract. As a result, even though you no longer work for your previous employer, the employment contract executed between you and the company may have lasting effects on any new business venture you undertake.



Photo: Oscar A. Gómez, Partner and Chair of the Litigation Practice Group at EPGD Business Law | Courtesy Photo

Step 2. Correctly set up your business entity

When starting your new business, it is important to lay a strong foundation for that business. One way to do this is by setting up the business in the proper entity form, either as an LLC, Corporation, LLP, or Partnership. Each of these business forms has its respective pros and cons, and it is essential that you undertake some research into which entity would suit your business best. There are also important tax implications for each business form and setting up your business as the “wrong” format for your business can have detrimental, long-lasting effects on your business.

Step 3. Put everything in writing

Whether you are a sole proprietor, a partnership, or an LLC with several members, it is crucial that you manage the expectations of every individual involved in the business venture by memorializing everything in writing from the very beginning. This includes creating operating agreements; creating employment contracts (if you plan on hiring employees); properly registering members when filing the registration of the business with the state; and confidentiality agreements.

Step 4. Ensure your employees are classified correctly

Common mistake entrepreneurs make when starting a new business venture is misclassifying their employees. For example, this means classifying an employee as a contractor, or a contractor as an employee, which may sound simple, but is a very serious violation of the law. This mistake is one of the easiest ways to get yourself involved in some serious lawsuits and facing expensive litigation. It is crucial that you review the requirements for the classification of both employees and contractors in your respective state of operation.

Step 5. Have a knowledgeable business attorney at your side

While starting your own business venture is a great idea, and one in which you can be very successful, it may seem easier to undertake than it actually is. With that being said, it is crucial that you hire a knowledgeable business attorney to advise you during the process of setting up your business, as well as being able to aid you if any legal obstacles come up at any stage of your business.

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