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How Law Affects Business Start-Ups

Every year, millions of Americans begin their own businesses. It all starts with a good business plan and continues with attempts to raise capital. Let's say you've taken these steps. Are you ready to open your doors? Not quite. You should dot some legal i's and cross some legal t's at this stage. Talking to your lawyer and taking steps now will make it far less likely that you'll incur trouble and expense later. Now is the time to look into the legal status of your business and the regulations that affect it.

We'll look at other steps, such as the various licenses and permits you might need, and dealing with taxes and tax ID numbers, in a later article.

What's in a Name?

You want your business name to be catchy and compelling, hard to ignore and impossible to forget. We can't help you there, but we can suggest a few steps that will help you avoid hard-hitting letters from somebody else's lawyer and the unpleasantness of having to trash signs and stationery you no longer can use.

Do Some Research.

There's no point in launching a business and finding out too late that someone nearby is using the same name, or one that's very similar. Your lawyer can help you by doing a search in business directories and checking with your county or city clerk, who probably maintains a list of business names that have been filed.

Register Your Name.

If you plan to do business under your name—and your full, legal name—then you may not need to register your business name with the authorities.

However, if you plan to use a business name that has no part of your name ("Comet Cafe") or only part of it ("Cory's Creations") then you need to file what's known as a **fictitious business name, assumed business name, or doing business as (DBA) name** with the clerk in your county or city.

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The filing—sometimes coupled with the requirement that you publish the fact that you are doing business under this name in a newspaper in your area—puts the world on notice that “Cory’s Creations” is your company. This gives you the right to conduct business under that name—including advertising under that name, using it when filing for permits, billing customers and paying taxes. In legal terms, it’s your **trade name**.

But that doesn’t mean you’re totally off the hook. Even if your name really is Wendy, and there are no restaurants with “Wendy” in their name in your area, and you register “Wendy’s Burgers” with the county clerk, you’re still going to draw the attention of the Wendy’s Corporation. That’s because they own the **trademark** of “Wendy’s” and can very probably force you to change your business name. If you want a **trademark** for your business name, which gives you protection for it all over the country, your lawyer can take care of the necessary filings.

You May Have to Register Your Name Several Times.

If you take no steps to formally organize your business, you’ll be a sole proprietorship, and probably face no other registration requirements. If, however, you organize your business as a corporation, you’re required to formally incorporate. Incorporation involves going through a formal process whose difficulty varies by state. Part of the process is getting approval of the name of your corporation.

Once again, your lawyer will do a search to determine if your preferred business name is already being used -- but this time the search will be with the official list of corporate names in your state. This is usually done through the Secretary of State’s office. If the name you want to use has not been taken, you can move to register it. Sometimes a registration is good for only a set number of years, after which you must renew the registration.

Rules, Rules, Rules...

It’s impossible to know exactly what regulations might apply to your particular business. Regulations vary by state, locality and the type of business. Some businesses, such as those involved in health care or food service, face complex regulation by many federal, state and local agencies. Other businesses, on the other hand, may be minimally regulated.

Businesses facing specific regulations because of particular products or services they offer usually need to get permits or licenses, so we’ll discuss the special rules they must follow in a future article.

Other kinds of regulations affect—or potentially affect—all businesses:

Businesses open to the public must comply with the Americans with Disabilities Act. Your lawyer can explain the requirements, or you may be able to get information about them through your city or state’s economic development office.

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Many types of business might have to be concerned with environmental regulations, including rules on air and water pollution, disposal of toxic materials and use of certain products (for example, the gas Freon, which is used in air conditioning systems).

Building codes set certain standards that construction must meet: they also may require you to get a permit if you do renovations. You can get information from your locality's building or public safety departments.

Zoning ordinances regulate which types of businesses are permitted in certain areas. Your lawyer can help you determine if your business qualifies in the location you've chosen, or if you need a variance from the zoning board that will enable you to operate there.

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- Estate Planning
- Probate and Trust
- Financial Planning
- Elder Money Management
- Income Tax for Businesses and Individuals

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