

# Women in Business

## Top 10 Legal Tips for Women Starting Their Own Businesses

by KATHERINE TANK and RENE SADE of Schwabe, Williamson & Wyatt

The rapid increase in the number of businesses that are being started by women is remarkable. A *New York Times* article that ran last fall cited that women currently start businesses at twice the rate of men. However, the article also pointed out that women-owned businesses have a much harder time reaching \$1 million in revenue; only three percent of women-owned businesses make it to \$1 million while seven percent of male-owned businesses hit the \$1 million mark.

For many of the women business owners we work with, the challenges and pitfalls they face are legal in nature, many of which can be avoided by addressing possible legal issues early on. To help women business owners prepare for the challenges associated with owning and running a business, we recommend that ten very important steps be taken when initially starting a new business. While these recommendations are not intended to constitute legal advice, they have proven valuable for many of our clients.

### TOP 10 LEGAL TIPS FOR WOMEN STARTING A NEW BUSINESS

#### 1. Determine what kind of corporate entity to create and create it on time.

Many women in business are not sure if they should create an "S" Corporation, a Limited Liability Partner-

ship, a Limited Liability Corporation, or operate as a "D/B/A." Also, they often fail to create the proper entity early on. Once the appropriate business entity is initiated, it is also critical that all the necessary paperwork is completed and formally recorded.

2. Determine personal assets versus business liabilities and protect both.

Unlike most men, many women start their businesses using their savings, retirement funds or credit cards. It is also common for women to grant personal guarantees or other security in order to obtain financing for their businesses. This practice exposes women to unnecessary liabilities and prevents them from building a business credit history for the future.

#### 3. Select the right employment structure for the business model.

Deciding whether to hire independent contractors or employees can be difficult. Whether or not to make the owner an employee of the business is another tough decision. Often, the wrong employment structure is chosen and, as a result, the most appropriate employment policies and



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practices are not put in place early enough.

#### 4. Use non-compete and/or nonsolicitation agreements and don't be afraid to enforce the agreements.

Many women are hesitant to use non-compete or nonsolicitation terms and

conditions with their employees and vendors. Some women incorrectly believe that such agreements cannot be enforced even if they are in place. These agreements can be drafted in a manner that is fair to both the businesses and the other parties.

#### 5. Recognize and manage intellectual property.

Recognizing and managing intellectual property is often overlooked by women in business. Before deciding on a trademark, a business owner must make sure it can be protected and does not infringe on another trademark. Once that is determined, it must be registered and protected in agreements with employees and business associates. Intellectual property should be reviewed at least annually, since businesses usually generate additional intellectual property as they grow.

#### 6. Implement appropriate vendor and client contracts.

Too often, women in business fail to reduce the terms of their business transactions to writing. Business owners sometimes hesitate to insist on a written deal, fearing that the other party will feel a lack of trust. All transactions of significance (irrespective of monetary value) should be documented in writing. Also, contracts proposed by vendors and clients should not be accepted without question. Women should take the opportunity to negotiate more favorable terms. Usually, suggested changes are positively received.

#### 7. Address conflicts that arise with friends hired as employees.

Hiring friends as employees is a common approach taken by women business owners. Hiring friends is often easier than hiring strangers since their backgrounds are known and

there is a level of trust already established. However, it is often difficult to make sure the friendship does not blur the employee-employer relationship to the business's detriment. By setting out written vacation and sick-leave policies as well as performance expectations, conflicts and stress can usually be drastically reduced, if not eliminated.

#### 8. Address conflicts that arise with partners and investors.

Going into business with or accepting investments from friends, families and business acquaintances presents the same risks and potential conflicts as hiring friends. Again, the key to reducing and hopefully avoiding such conflicts is to be proactive. Business owners should talk about and plan for the "what if," and then put that plan in writing from the outset.

#### 9. Negotiate appropriate terms and conditions for commercial leases.

This common obstacle and pitfall is similar to the one concerning vendor and client contracts. Too often women in business do not consider their legal rights or investigate the current marketplace before signing commercial property leases.

#### 10. Determine how to appropriately and effectively handle collection matters.

Unfortunately, all businesses have to deal with outstanding accounts receivable. Learning the business's legal rights and how to implement effective account origination and collection policies and practices is the best way for a woman in business to ensure success. With proper planning, outstanding accounts are a manageable nuisance, not an overwhelming problem that disrupts the success of a business.

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