

**THE
JURIS DOCTOR
SMALL BUSINESS
WATCH**

**A NEWSLETTER FOCUSING ON
PLANNING FOR THE SMALL BUSINESS**

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Small Business Planning Group**

Ohio State Bar Association: Board Certified in Estate
Planning, Trust and Probate Law



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**ADVERTISING WHEN YOUR
BUDGET IS ZIP, ZERO OR LESS**

The National Federation of Independent Businesses offers the following advertising hints when your budget is zip, zero or less.

- ▶ Network at meetings conferences or other get-togethers where people are present who can put you in touch with potential customers and refer customers to you.
- ▶ Ask for referrals from everyone - customers, potential customers and suppliers - then follow up.
- ▶ Using the phone book, industry lists, or referrals, pick up the phone and call. Try to talk to the decision maker.
- ▶ Hand out your business card to everyone you meet. Think of them as miniature billboards.
- ▶ Give talks to potential customers. See if you can secure a free room at a local library. Place a press release. Don't oversell but give useful information.
- ▶ Contact local newspapers or industry publications and offer to write articles.
- ▶ Contact successful businesses in your area who may be interested in outsourcing.
- ▶ Establish a web site.
- ▶ Send press releases and keep sending them. Make sure they are not mundane but reflect something significant such as new staff, completion of a large project or charitable work, or other significant event.

(NFIB2/19/04)

**AVOID COMPLAINTS AND SUIT
FOR SEXUAL HARASSMENT IN
WORK PLACE**

Unwelcome sexual advances, requests for sexual favors, and other conduct of a sexual nature constitutes sexual harassment when it affects an individual's employment, interferes with work performance, or creates an intimidating, hostile, or offensive work environment.

The victim as well as the harasser may be a woman or a man and they do not need to be of the opposite sex. The harasser can be the victim's supervisor, agent of the employer, supervisor in another area, co-worker or even a non-employee. The victim does not have to be the person harassed but could be anyone affected by the offensive conduct. Sexual harassment does not need to result in economic harm or firing of the victim.

When investigating allegations of sexual harassment, EEOC* looks at all of the circumstances including the nature and context in which the conduct occurred then makes a determination on a case-by case basis. EEOC rarely prosecutes cases but will issue a right to sue letter.

If you do not want your business to be exposed to sexual harassment suits or complaints, clearly communicate to employees that sexual harassment will not be tolerated, establish a complaint or grievance process, and take immediate and appropriate action when an employee complains.

*Equal Employment Opportunity Commission

IS YOUR SPOUSE AN EMPLOYEE OR A PARTNER?

Is your spouse a partner or an employee of the business?

A spouse is considered an employee if there is an employer/employee relationship, i.e. one spouse substantially controls the business and the second is under the direction and control of the first. The employee spouse's wages are subject to income tax, FICA and withholding.

But if the spouse has an equal say, provides equal services, and contributes capital, then a partnership exists at least for tax purposes. Each partner should attach Schedule K-1 of Form 1065 (Partner's Share of Income, Credits,

Deductions, etc.) when preparing their separate or joint form 1040. They should not utilize Form 1040 Schedule C (Profit or Loss From Business, Sole Proprietorship) Each partner should also include Form 1040 Schedule SE (Self Employment Tax). This generally does not increase the total tax but it does give each spouse credit for social security earnings on which retirement benefits are based*.

*This may not be true if either spouse exceeds the social security tax limitation

SURVIVAL OF THE FITTEST

Are you struggling to keep your business open? According to Dr. Paul E. Adams, your immediate goal must be survival. If you are really determined to save your business, the first step is to reduce expenses - it's not glamorous and it's probably downright painful. Look for every dollar not the "big cut". What do you really need and what can you do without or reduce? Cell phone?

Company tickets? 800 number? Ads and giveaways? Health plans? Retirement plans? Magazine subscriptions? Employees? Consider everything on the potential cut list. Ask everyone for help and do not spend one extra dollar.

(Survival: Step One - Cut expenses, Paul E. Adams, www.morebusiness.com)

BANKRUPTCY POINTERS

The filing of a bankruptcy is an automatic injunction against all collection efforts. A creditor may seek relief from this automatic stay to continue collection efforts.

Notice of a Chapter 13 filing (a wage earner repayment plan) must not be ignored. If a proof-of-claim is not timely filed by the creditor, the debt will be discharged without payment by the Chapter 13 Trustee. This is true even though the debtor listed it for payment in the plan. Typically, a Chapter 7 bankruptcy (discharge of all debts without a repayment plan) are *no asset* cases for which no proof-of-claim is filed.

A creditor may object to the discharge of a debt for various reasons including debts for:

-student loans

- certain taxes
- child support or alimony,
- certain injuries to person or property
- false representation or fraud
- reliance on a false financial statement,
- certain consumer debts (luxury items or advances made within 60 days of filing of the bankruptcy)

A debtor may file a Chapter 7, but reaffirm a secured debt, in order to retain use of the collateral. Specific agreements must be signed and filed with the court for a reaffirmation.

John Rebel is an attorney with McKinney & Namei, Co., LPA and practices bankruptcy law.

BUSH PROPOSES NEW SAVINGS PLANS

President Bush's 2005 budget includes two savings accounts which will allow contributions with no limitations based on age or income status. Employer Retirement Savings Accounts would consolidate several types of plans now in existence into a single plan that could be more easily established by an employer. Individual Development Accounts would provide dollar for dollar matching contributions up to

\$500.00 and are targeted to lower income persons. With Social Security unable to be increased or even maintained at present levels, these alternative, privately controlled retirement systems will become increasingly important, necessary and popular.

(Treasury Department News Release TDNR JS-1131)

THINK ABOUT ANTITRUST WHEN THINKING ABOUT COMPETITION

While American enterprise may thrive on competition, the Small Business Administration cautions that antitrust laws make it illegal to conspire to restrain commerce in any marketplace regardless of size. And while it is usually small businesses who fall victim to the unfair business practices of larger companies, small businesses can be prosecuted for unfairly dominating markets localized in cities, towns or niche industries. Consider the following:

- ▶ Discussing prices with competitors, even if it affects a small marketplace, may be construed as a violation of antitrust law.
- ▶ Using dominant industry power to secure favorable product prices from sellers is

generally a violation of antitrust laws.

- ▶ Communicating with other businesses about a potential boycott of another competitor or supplier may be a violation.
- ▶ Agreements between competitors to divide up customers, territories or markets are illegal even when the competitors do not dominate a particular market or industry.
- ▶ Preserving a monopoly position by acquiring competitors, excluding competitors to a given market, or controlling market prices are all in violation of antitrust laws.

(Small Business Administration 2/19/04)

HOUSE WANTS TO MAKE CONTRACTING SIMPLER

Washington lawmakers are attempting to open up the government procurement process to more small business contractors. Toward that end, the House of Representatives passed a bill that would prohibit federal agencies from penalizing contractors that allow workers to telecommute. Currently, federal agencies can refuse bid proposals from contractors that allow telecommuting.

A recent International Telework Association and Council survey determined that 20% of U. S. employees work away from the main office in one form or another, translating into 28 million workers. A substantial number of teleworkers expressed increased job satisfaction, increased productivity, and greater commitment to their employer. If telecommuting works for a particular company, it can be a way to reward

valuable employees without adding to the bottom line. The House bill has been forwarded on to the Senate.

In addition, the Small Business Administration, the Department of Defense, the Office of Management and Budget and the General Services Administration are trying to simplify the federal contracting process by creating an integrated database of small businesses that want to do business with the government. The goal is to create one stop searching for small business sources for government contracts and to assist small businesses with marketing their goods and services to the federal government.

(Business Owner's Tool Kit, 2/19/04)

BUSH PROPOSES IMMIGRANT WORKER LAW

On January 7, President Bush proposed significant liberalization of U.S. immigration policy in an effort to "make immigration laws more rational and humane". Toward that end, Bush asked congress to pass a temporary worker immigration law which would allow workers to enter the United States and fill jobs that Americans are not filling and avoid the exploitation and abuse that illegal immigrant workers often face.

Bush's plan would require all who participate to have a job or a job offer. The legal status granted would last three years with the potential to renew. Person who do not remain employed, follow the rules of the program, or who break the law will be required to return home.

American employers must be required to make every reasonable effort to find an American worker and the law should provide a quick and

simple system for employers to search for American workers. Employers must report who they hired and report when they leave in order to enforce immigration laws.

While estimates vary, there seems no disagreement that there are millions of immigrants in this country illegally. Companies who hire them, often because they cannot find Americans to fill the jobs, are exposed to criminal penalties for doing so. Lower wages paid to illegal workers penalize companies who do not hire illegal workers and who pay a higher wage to obtain American workers. Wages are often paid in cash under the table and are untaxed.

Whether Bush's idea becomes law is too soon to tell but observers say if it is going to pass, it will require Bush to throw his influence behind it and spend political capital. Stay tuned.

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Daniel H. McKinney is the founding attorney of McKinney & Namei, Co., LPA and head of the Daniel H. McKinney & Associates Small Business Group. He is a native of Cincinnati and a graduate of the Ohio State University and Harvard Law School. Mr. McKinney represents many small businesses and individuals in corporate, tax, real estate, immigration, pension and probate matters. He is board certified by the Ohio State Bar Association in estate planning, trust & probate law, lectures widely, and was named as a 2004 Ohio Super Lawyer by Cincinnati Magazine.

Linda S. Bolin practices trademark, Medicaid, long term care, business, health, and elder law. She is vice-chair of the elder law committee of the Cincinnati Bar Association, and has served as vice president of the Chase Women's Law Caucus, president of the Dallas Metro Counseling Association and Trustee of the Cincinnati, Arts Consortium, the Sarah Center, and the Terrace Guild. Previously, she was a city planner and director of planning for the City of Cincinnati Health Department.

Bob Herzog is a 2002 graduate of the Salmon P. Chase College of Law and a member of the Ohio, Cincinnati, and American Bar Associations. Mr. Herzog's focus is in the area of Probate and Estate Planning. He is also a correspondent for WB64 TV.

*Netscape Navigator may currently work better for some computers