HSO LAW
CHANGING THE GAME

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Welcome to HSO Law. We're excited that you've chosen us to accompany you on your entrepreneurial journey.

Why We Do This. This firm was founded by litigators. The firm's principal, Heather Orr, spent over a decade working within the legal system only to come to the realization that it's – simply- inadequate. No matter how much success we achieved in court, our clients usually found the experience to be unduly expensive, time-consuming, and stressful. Even if one has a viable legal claim or defense, it's often not worth the cost and externalities to litigate, and litigation can often be fatal to the small business.

That is why, in a move highly unusual for trial attorneys, HSO Law pivoted. In 2009, we got into the transactional game, and at the conclusion of 2017 we officially closed down our litigation practice. We now focus solely on keeping you out of the courtroom.

Our plan of attack is two fold: (1) to draft better contracts than those that we had litigated, and (2) to provide affordable and responsive legal advice so that smaller businesses could have access to such advice when they need it most, namely *before* a dispute arises.

When it comes to our bloated and inefficient legal system, an ounce of prevention really is worth a pound of cure.

In order to maximize our efficiency and keep your costs low, we've developed this guidebook to help you identify risk, prioritize legal spending, and build a business within your individual risk tolerance.

What this means for you is that we put your legal spending in your hands. This packet will detail the legal issues that may arise from time to time. You choose when to hire us for a project, when to take your own precautions, and how to make your legal dollar go the farthest.

This guide is full of complimentary information that will help you strategically navigate the day-to-day operation of your business.

Together, we can work to keep you out of the courtroom so that you can focus on what matters most to you: building your business.

How to Use this Guide

Generally speaking, some of the biggest choices you will make as you embark upon your new business are (1) what type of entity to form and where to form that entity, (2) whether to categorize workers as employees or independent contractors and (3) how to protect yourself from employee claims.

The inquiry into possible legal landmines often ends there and new businesses assume that they are protected once they've resolved the above.

However, there are multiple other potential landmines that can derail your business. Luckily, not every landmine is a potential threat to every company and many can be avoided altogether with a little foresight and planning.

Our goal in developing this guide is to provide you with an overview of those landmines so that you can plan accordingly. **It is in no way meant to constitute or substitute for actual legal advice.** It's more of a guidepost to alert you to when you should seek counsel.

How to Use This Guide:

- Do a quick skim and take a look at the highlighted "short answers."
- Keep it as a quick reference for the various situations addressed.
- Become familiar with the primary issues covered so that you know when to pick up the phone and call us.

It is our vision that, as a small to medium-sized business, you can compete on a level playing field with large corporations. Large corporations have teams of people keeping them informed of these issues. However, these teams don't have a monopoly on talent and they are often lacking in efficiency.

Instead, we offer you this shortcut to start unpacking the legal issues your company might face and we are here to assist you in your navigation of the same.

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I. Choosing a Business Entity.

***Short Answer*: Most modern businesses would be best served by an LLC structure. The exceptions are (1) businesses seeking to attract a particular type of funding early on in their growth, (2) business planning on going public within three to five years, and (3) businesses providing licensed professional services in states where licensed professionals must incorporate. The latter three companies might be better served by incorporating.**

Not only will your choice of entity affect the structure, operation, and tax liability of your business, your choice of entity dictates the extent to which your personal assets are protected.

There are six basic entities commonly used to structure a new business. They are the sole proprietorship, general partnership, limited partnership, limited liability partnership (LLC), limited liability company (LLP), and the corporation (Inc.)

1. Sole Proprietorship

The oldest business entity is the **sole proprietorship**. If you own your business as an individual and have not filed any documents with the Secretary of State, you are operating as a sole proprietorship. As with every business structure, the sole proprietorship comes with its own set of pros and cons. The strengths of a sole proprietorship are flexibility, pass through tax liability, simplicity, low cost of formation and elegance of management. The weakness of a sole proprietorship, however, is significant. If you own a sole proprietorship, your personal assets remain unprotected and can be attached should anyone secure a judgment against your company. It should be noted, however, that if you are a new business, many institutions with whom you do business with will require you to personally guarantee any debt incurred by your company even if you are an LLC or corporation. As such, status as a sole proprietorship generally only

creates more personal exposure of your personal assets than an LLC or corporation with clients, customers and those vendors not requiring a personal guarantee. There are clauses that can be utilized in your client and customer service agreements to minimize this exposure. Thus, if you prefer to operate your company as a sole proprietorship, at least in the beginning, you should seek legal advice regarding the terms of your client or customer service agreements.

2. General Partnership

Similarly, if you operate your business with another individual or other individuals, but have not entered into a written agreement or filed documents with the Secretary of State, you are a **general partnership**. In the absence of an agreement between partners, the Revised Uniform Partnership Act governs a California partnership. In a general partnership, all of the partners remain personally liable for the debts and obligations of the partnership. Thus, like the sole proprietorship, the general partnership offers no protection of the personal assets of the partners. Also, like the sole proprietorship, a general partnership also offers pass-through tax liability, low cost of formation, and flexibility. If you are a partner in a general partnership, you are strongly advised to, at the minimum, enter into a partnership agreement with your other partner(s). There are innumerable cases that have been litigated involving a partnership gone bad, many of which could have been avoided if the partners had actually sat down and put on paper the terms of their agreement. In many cases, this simple act can reveal that the partners were not actually on the same page regarding some material terms, giving them an opportunity to work it out before the company becomes profitable and there was a pot of money to fight over.

3. Limited Partnership

Third, we have the **limited partnership**. In a limited partnership, the limited partners are liable for the obligations of the company only to the extent of their investment in the same. The limited partners are generally passive investors who do not have an active role in the management of the company's affairs. The general partners remain liable for the debts and obligations of the company.

4. Limited Liability Partnership

Fourth, but seldom used, is the **limited liability partnership** (**LLP)**. This entity requires the filing of documents with the Secretary of State and allows for the protection of the personal assets of the partners. In most other ways, it resembles a general partnership, allowing for pass-through tax liability and flexibility of management. The partners can run the business themselves, have protection for their personal assets and incur tax liability as if they were each operating their own sole proprietorship. This entity is not frequently utilized because the LLC, which was developed after the LLP, offers many of the same benefits with more flexibility and is generally more attractive to investors.

5. Limited Liability Company

The **limited liability company** (**LLC)**, is one of the most common choices for business entities among newly formed businesses. The LLC offers protection of personal assets, significant flexibility in the management, ownership and operation of the company, and pass-through tax liability. The individuals with an ownership interest in an LLC are referred to as members, with one or more members being designated as the managing member. The biggest drawback for many small companies is the $800 annual fee for maintaining an LLC. However, the benefits conferred by the LLC structure far outweigh this cost, which is minimal if the company becomes profitable. While the formation costs can be limited to $800, as it is not required that an LLC prepare and sign an operating agreement, it is strongly advised that you execute an operating agreement. Again, innumerable cases that involved a business relationship gone "bad" have been litigated, most of which could have been avoided if the parties had actually sat down and put on paper the terms of their agreement. In many cases, this simple act can reveal that the owners were not actually on the same page regarding some material terms, giving them an opportunity to work it out before the company becomes profitable and there was a pot of money to fight over.

6. Corporation

The **corporation** is frequently formed for many of the same reasons that an LLC is used. Forming a corporation requires the filing of documents with the Secretary of State as well as payment of a fee. Similarly, it also offers protection of your personal assets. However, the documents that must be filed and maintained to form a corporation are not as simple as the document required to form and maintain an LLC. Thus, many clients prefer the simplicity and flexibility of an LLC to the more cumbersome and rigid corporation.

Tax-wise, becoming a corporation can result in greater tax liability, depending on the type of corporation you select, whether an S Corporation or a C Corporation. It is possible, however, to set up your corporation for status as a pass-through entity for tax purposes. Some people are of the opinion that a corporation is the entity of choice for would-be investors. However, this is debatable, as an LLC is also generally attractive to investors. Obviously, if you have any intention of one day going public, you will need to be a corporation at that time, but conversion at a later date is usually a manageable cost in exchange for the ease of maintaining an LLC in the interim.

(It should be noted that if you are providing services of a licensed professional, you may have to file as a **professional corporation or LLC**, depending on what is available in your state.)

Where should you form your company?

Short Answer: You should file either in your home state, or in Delaware if you're willing to pay a premium for its benefits, the value of which varies depending on circumstance.

New business owners frequently ask whether they should form their entity in their home state, Nevada, Delaware, or somewhere else. The answer depends on your particular circumstances. Generally, you want to form your entity in either

(1) your primary location/home state, or (2) Delaware. It likely won't benefit you to file in a "cheaper" state, because many states – like California – will require you to qualify to do business in the state in which you're located (which means paying their minimum tax regardless). Thus, you end up paying business taxes in *two* states.

Some business owners prefer Delaware because (1) filing is simpler, faster and more seamless, (2) Delaware law favors management rights, whereas the laws in California (and some other states) favor shareholder rights, and (3) Delaware has a dedicated court for business disputes that – in theory – better serves businesses. Filing in Delaware, however, will not save you from also having to file and pay in your home state, so you pay a premium (double the annual fees) to file there.

What other documentation/licenses do you need?

Short Answer: You likely need a local business license, possibly a DBA, and possibly an industry-specific license.

In addition to the charter documents necessary to form a corporation, LLP or LLC, you may also need to file for a **local business license**. The costs associated with such vary from city to city so you should speak to counsel regarding your obligations in this regard.

You may also want to file a **Doing Business As** (**DBA)** if you plan on using a trade name other than your business name or your personal name**.** A DBA can also be useful in the event that you change entity-types, sell part or all of your business, or change business names. In these instances, a DBA can allow you to continue doing business under the same name, without alerting the public to internal changes within the company.

Finally, your business may require industry-specific licenses.

II. Protecting Your Corporate Shield

Short Answer: unless you take steps to maintain corporate/company formalities and keep your business adequately capitalized, your personal assets may be vulnerable.

One of the most useful aspects of forming a corporation, an LLC or an LLP is the protection of your personal assets. Generally, if the business you own is one of these entities, you are not personally liable for the debts and liabilities of the company.

There is an exception to this rule. The exception is referred to as the piercing of the corporate veil/shield. Essentially, if your company is run for the personal benefit of its owners and the company is a "mere instrumentality" of the owners, rendering it "unjust" to keep them separate, a court may disregard the corporate shield.

All too frequently, new business owners—by the nature of being a new business—ignore this exception, when in all reality they may be more likely to have the exception applied to them!

There are approximately 17 factors under California law that can lead to the piercing of the corporate shield. The most important questions that a court will ask are:

- Was the company and its owners acting as a single economic unit? Did they adequately capitalize the company (putting money into the company and keeping money in the company rather than taking it out for personal use)? Is the company solvent? Were corporate formalities observed? Did the owners/shareholders/members siphon company funds for their personal use?

- Did the company really act as a facade for the dominant owner/shareholder/member? Did he/she pay personal expenses out of business accounts or pay business expenses out of personal accounts?

- Would it be unjust or unfair to keep the corporate shield intact?

Generally, the most important factor that comes up time and time again in case law is whether the company was adequately capitalized. If the owners/shareholders/members took the entirety of company money out of the account each month or paid themselves a salary equal to the total profit of the company, the company won't be able to cover any liabilities that arise, in which case a court will likely pierce the corporate veil.

One key factor to note is that the observance of corporate formalities is also important. Thus, even though you aren't required to have a written operating agreement in place if you're an LLC, having one in place greatly strengthens your corporate shield.

The strength of your corporate shield is a complicated and nuanced legal issue. It is also one that is critical to the protection of your personal assets. As such, it's recommended that you seek counsel if you have any concerns whatsoever about whether you're taking adequate steps to ensure the viability of your corporate shield.

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III. Protecting Your Intellectual Property.

Short Answer: Your intellectual property is likely one of your most valuable assets, if not the most valuable asset. If you don't take steps to protect it, you could weaken or even waive your right to do so at a later time.

The following are some important tools and key tips to consider when protecting your intellectual property.

Trademark

A trademark is a symbol, word, or words legally registered or established by use as representing a company or product. Your trademark is protected via your use of it in the marketplace; however it is protected to a much greater degree if your register your trademark. Doing so will also entitle you to increased damages in the instance of a violation.

Patent

A patent is a government authority or license conferring a right or title for a set period, especially the sole right to exclude others from making, using, or selling an invention. Not every invention can be patented. HSO law does not file for or prosecute patents. We have an excellent referral for a patent law specialist, who works hand in hand with our office on many intellectual property issues.

Copyright

A copyright is the exclusive legal right, given to an originator or an assignee to print, publish, perform, film, or record literary, artistic, or musical material, and to authorize others to do the same. You have an automatic copyright in certain works that you create. However, registering your copyright can grant you additional protection and remedies.

Trade Secret

A trade secret is a formula, practice, process, design, instrument, pattern, commercial method, or compilation of information not generally known or reasonably ascertainable by others by which a business can obtain an economic advantage over competitors or customers.

KEY STEPS THAT EVERY BUSINESS SHOULD TAKE

It's not enough to simply register your intellectual property (IP). In order to ensure that you don't waive your rights, every company should take the following steps:

- Use NDAs (non-disclosure agreements) with anyone you disclose confidential or proprietary information to.
- Have every employee and independent contractor execute Confidentiality and Invention Assignment Agreements.
- Label proprietary business information "Confidential."
- Collect any intellectual property held by departing workers.
- Consider having an IP inventory taken to ensure you're adequately protecting your IP assets.
- Utilize security methods with regard to any persons privy to the company's proprietary information.
- Pursue infringement on any violation of your rights. Send cease and desist letters and initiate legal action if necessary. Your failure to do so could constitute a waiver of your rights.
- Utilize IP licenses whenever giving some one a right to use your IP; enforce your rights under the same vigorously.

IV. Hiring Employees or Independent Contractors.

What's the difference?

Short Answer: up until May of 2018, the primary difference between employees and independent contractors involved the level of "control" exercised by the company. However, this topic is complicated and made more unpredictable by recent litigation involving companies like Uber and Lyft, as well as the ruling in Dynamix which changed the test to be utilized for wage orders.

Essentially, *Dynamix* replaced the previous 11-factor test for determining whether a worker could be classified as an independent contractor with a simple 3-factor test. This will substantially affect the way that many, many, businesses operate and should be taken very seriously if you have any independent contractors.

In order for a worker to be an independent contractor, *for purposes of wage orders,* the burden is now on the employer to prove that all 3 of the following apply:

(A) The worker is free from control and direction of the hiring entity in connection with the performance of the work, both under the contract for performance of the work and in fact;

(B) The worker performs work that is outside the course of the hiring entity's business; and

(C) The worker is customarily engaged in an independently established trade, occupation, or business.

Now again, currently this new rule applies only for the purpose of wage orders (overtime, minimum wage, etc.) however, it's likely that it will spread to tax classification, DFEH protections, and more. Anything beyond wage classifications is a large gray area for the moment.

In the meantime, if you have any concerns, please reach out to schedule a call to assess your risk or even have us conduct an employment audit (which will also allow us to confirm your compliance with ever-changing minimum wage requirements in various cities across the state).

***As of now*, the following test technically still applies to the determination of independent contractors vs. employees in the context of tax classification, state and federal employee protections, and more:**

1. **Instructions**. Workers who are required to comply with others' instructions about when, where, and how they are to work are ordinarily employees.
2. **Training**. Training workers indicates that employers exercise control over the means by which results are accomplished.
3. **Integration.** When the success or continuation of a business depends on the performance of certain services, the workers performing those services are subject to a certain amount of control by the owners of the businesses.
4. **Services rendered personally**. If services must be rendered personally, employers control both the means and the results of the work.
5. **Hiring, supervising, and paying assistants.** Control is exercised if employers hire, supervise, and pay assistants.
6. **Continuing relationships**. Continuing relationships between workers and employers indicate that employer- employee relationships exist.
7. **Set hours of work.** The establishment of set hours of work by employers indicates control.
8. **Full-time required.** If workers must devote full time to employers' businesses, employers have control over workers' time. Independent contractors are free to work when and for whom they choose.

9. **Doing work on employers' premises**. Control is indicated if the work is performed on employers' premises.
10. **Order or sequences set**. Control is indicated if workers are not free to choose their own patterns of work but must perform services in the sequences set by the employers.
11. **Oral or written reports**. Control is indicated if workers must submit regular oral or written reports to employers.
12. **Payment by hour, week, or month**. This points to employer-employee relationships, provided that this method of payment is not just a convenient way of paying a lump sum agreed on as the cost of a job. Independent contractors are usually paid by the job or on straight commission.
13. **Payment of business and/or traveling expense.** Employers paying workers' expenses of this nature shows that employer-employee relationships usually exist.
14. **Furnishing tools and materials.** If employers furnish significant tools, materials, and other equipment, employer-employee relationships usually exist.
15. **Significant investments.** Workers are independent contractors if they invest in facilities that are not typically maintained by employees (such as an office rented at fair market value from an unrelated party). Employees depend on employers for such facilities.
16. **Realization of profits or losses.** Workers who can realize profits or losses (in addition to profits or losses ordinarily realized by employees) they are independent contractors. Workers who cannot are generally employees.
17. **Working for more than one firm at a time.** If workers perform services for a number of unrelated persons at the same time, they are usually independent contractors.
18. **Making services available to the general public.** Workers are usually independent contractors if they make their services available to the general public on a regular and consistent basis.
19. **Right to discharge**. The right of employers to discharge workers indicates that the workers are employees.

20. **Right to terminate.** Workers are employees if they have the right to end their relationships with their principals at any time without incurring liability.

Courts have also considered whether the services being provided are an integral part of the company's business or whether the services are separate, distinct and/or usually performed by independent professionals.

We understand that this is a complicated matter. We can assist you in determining the proper classification of your workers *or* you can file an SS-8 for a dispositive ruling on the issue.

Hiring Guidelines

It's critical that you follow federal and local law with regard to proper hiring procedures. A failure to adhere to employment law can be devastating to your business, both legally and public relations-wise.

Below is a overview of critical guidelines.

Questions *not* to ask in an interview:

1. Questions relating to race, national origin, gender, medical condition religion, sexual orientation and gender identification, military or veteran status. These are all protected classes in California, and many are also federally protected.
2. Additionally, the following subject areas are often used as a run-around for many of the above direct questions and should also be avoided.
    - Birthplace
    - Marital Status
    - Citizenship
    - Date of graduation from high school or grade school
    - English language skills, unless necessary for the job
    - Religious affiliation
    - How/when foreign language skills were acquired

- Relatives' names
- Mental illness history
- Membership in organizations
- Maiden name
- Pregnancy status
- Number of children, future plans to have children
- Hospitalization, illness history, prescription medications
- Days absent from work in previous year due to illness
- Worker's comp history
- Past treatment for drugs and alcohol
- Weight or height, unless necessary to safely perform the job

3. Other topics to avoid:
    - Credit Rating or BK proceedings
    - Past garnishment of wages
    - Whether they own a home
    - With whom they reside
    - Whether they've ever sued a past employer
    - Whether they smoke
    - Arrest record (you cannot ask about arrests or detentions that did not result in conviction). You can ask about any arrest for which the applicant is currently out on bail.
    - Whether military discharge was honorable or dishonorable
    - Foreign military service
    - Questions focusing on paid work to the exclusion of volunteer work

Questions to ask:

- Job history; reasons for leaving previous jobs
- Place of residence
- Proof of age (whether the applicant can submit proof if hired)
- Whether the applicant is 18 years of age or older
- Whether a minor applicant can provide a work permit after being hired
- Education level, if job-related

- Schools attended
- Any name change about which the employer should know in order to verify the applicant's job history
- Whether the applicant is authorized to work in the country
- Whether the applicant has relevant paid, unpaid or volunteer work experience
- Name and address of a person to be notified in case of emergency
- Whether the applicant can perform the specific job functions with or without accommodations (it may be helpful to attach a job description to the application form)
- Whether the applicant can meet attendance requirements (you should list regular working hours and leave policies such as working overtime, working on weekends, traveling for work, etc.)
- Felony convictions record (the EEOC recommends that questions about convictions be accompanied by a statement that a conviction record will not necessarily bar employment, and that factors such as age at the time of the offense, nature of the violation and rehabilitation will be taken in account). If you decide not to hire based on a conviction, it must be for a legitimate business reason. (Note: In San Francisco, CA, companies with 20 or more employees cannot ask about or run background checks involving felony convictions until a conditional offer has been made).

Steps to take for a successful hiring process:

- Obtain an authorization to check the applicant's references. Your communication with them is generally protected (unless statements are made with malice). Obviously, do not ask them any of the above questions. Also, dig in and make sure they are actual work references rather than friends or family members.
- Review any available social media accounts.
- Have applicants sign a statement that all answers the applicant provides are true and complete. (You may be able to defend against a wrongful termination lawsuit by proving that the employee put false information on the job application, even if you discover this after the fact.)

- Have applicants sign a statement that employment is "at will," which means both you and employee can end the employment relationship at any time, with or without cause.
- Conduct background checks by an outside investigative company. Avoid doing credit checks as a part of it because those often contain criminal histories. Under the California Investigative Consumer Reporting Agencies Act (ICRAA), an employer is permitted to use consumer credit reports only if the individual is applying for or works in the following positions: a managerial position; a position where the individual would be a named signatory on the employer's bank or credit card account and/or authorized to transfer money on behalf of the employer; a position with access to large amounts of cash, or a position that affords access to confidential or proprietary information. [Labor Code 1024.5]. If you're not running a credit report, it's best to communicate that to the applicant.
- You can require a physical exam, but only *after* the offer is made. It cannot be aimed at discovering physical impairments. It must be paid for by you and provided to the new hire.
- *After* a conditional offer of employment (and *after* the background check is passed), you may require a drug test, provided that you require the drug test for all new hires.

Firing Guidelines

Dos:

- Have written, established policies for **discipline** and reviews and follow them consistently with everyone. Handbooks are great in this regard, as are forms that are used consistently. (Forms for writing-up an employee, forms for documenting sick day requests, etc.)
- Have written **job expectations and metrics**.
- Document excessive tardiness, absences, insubordination, failure to perform job duties, and any other issue with an employee. Progressive discipline is a great defense, if used consistently (it can be the opposite if used inconsistently).
- If an employee is being fired for an incident or series of incidents, *do* conduct and document a thorough investigation. It's advisable to have the investigation lead

by counsel to ensure attorney client privilege. (Sometimes, if not conducted by attorneys, the investigations – which are discoverable – actually form the basis of the lawsuit.)

- Ask consistent questions of every witness.
- Have questions prepared in advance.
- Remain objective.
- Treat each incidence separately.
- Do not unnecessarily disclose information to witnesses.
- Do not promise confidentiality to witnesses.
- Make efforts to keep information confidential.
- Conduct drug tests if you have a reasonable suspicion that an employee is under the influence of drugs or alcohol at work. (There is a privacy concern here. It's best to conduct the test with privacy, though precautions can be taken to ensure that they aren't being faked – the tester can listen to them pee but not watch them, for example.)
- Keep the termination conversation brief. (This isn't legally inspired as much as experts consider it best practices. But there is debate, so do not consider this the final word. Generally, the feeling is that the more detail you give, the more an employee has to argue against, including an alleged failure to follow your own established procedures. It's awkward, but it's best not to risk them walking out and straight into a lawyer's office because they disagreed with something you said. Give them little to disagree with. If you do disclose the reasons, be brief and stick only to documented facts.
- Thoroughly investigate any claims of a hostile work environment, discrimination, etc. to prevent allegations of constructive termination. There are many factors that can lead to a constructive termination claim (demotion, humiliation, embarrassment, badgering, harassment, etc.).
- Have an HR witness present for the termination.

Don'ts

- Whistleblower**.** Do not fire anyone who has recently reported a violation of law. Reach out to counsel in the event that this comes up – the law is nuanced and too

complicated for this document (re who they report to, what they report, what type of violation is alleged, the accuracy of the reported violation, etc.)

- Discrimination. You can't fire anyone for any of the reasons for which denying employment is illegal.
- Worker's comp. You cannot fire some one because they apply for worker's compensation.
- Medical leave. You cannot fire some one because they utilized the Family Medical leave act.
- Investigation. You cannot fire some one for participating in any discrimination or sexual harassment investigation.
- Don't conduct random drug tests, unless they are for safety-sensitive positions.
- Don't fire anyone with a medical marijuana card (though you can refuse to hire anyone who tests positive, regardless of possessing a card).

General Employment Guidance

Employment law is governed by the state in which the employee works. It varies wildly from state to state. For instance, in California, non-competes are not only unenforceable, but courts are sanctioning companies that attempt to use them. Many states allow non-compete agreements. Further, each state has different requirements with regard to required benefits, required workplace postings, wage and hour regulations, and more.

Upon request, we can provide you with a comprehensive overview of your state's requirements.

Besides working with us, we also recommend using the following professionals to insure compliance (1) an insurance broker to secure worker's compensation insurance and any other advisable insurance for your industry and (2) a payroll service that insures and indemnifies for wage and hour claims.

The key to employment law (once you've established compliance with the above requirements) is to treat everyone the same.

Discrimination claims rely on assertions that a particular person was treated differently. While this may sound easy, young (and old) businesses often overlook the importance of having written guidelines, handbooks, and policies to direct them in various situations. Often these policies, when consistently followed, establish that a given employee was treated the same as all similarly situated employees. (We can prepare Employee handbooks, policy guidelines and a multitude of forms for use in managing employees.)

Minimum Wage Increases July 2018

Jurisdiction	Former Minimum Wage	Minimum Wage Effective July 1, 2018
Belmont	$11.00	$12.50
Berkeley	$13.75 $12.00 (YouthWorks and youth job training programs)	$15.00 (Effective October 1, 2018) $13.25 (YouthWorks and youth job training programs)
Emeryville	$14.00 (55 or fewer employees) $15.20 (56 or more employees)	$15.00 (55 or fewer employees) $15.69 (56 or more employees)
Los Angeles (City)	$10.50 (25 or fewer employees) $12.00 (26 or more employees)	$12.00 (25 or fewer employees) $13.25 (26 or more employees)

Los Angeles County (Unincorporated)	$10.50 (25 or fewer employees) $12.00 (26 or more employees)	$12.00 (25 or fewer employees) $13.25 (26 or more employees)
Malibu	$10.50 (25 or fewer employees) $12.00 (26 or more employees)	$12.00 (25 or fewer employees) $13.25 (26 or more employees)
Milpitas	$12.00	$13.50
Pasadena	$10.50 (25 or fewer employees) $12.00 (26 or more employees)	$12.00 (25 or fewer employees) $13.25 (26 or more employees)
San Francisco	$14.00 $12.87 (government-supported employees)	$15.00 $13.27 (government-supported employees)
San Leandro	$12.00	$13.00
Santa Monica	$10.50 (25 or fewer employees) $12.00 (26 or more employees)	$12.00 (25 or fewer employees) $13.25 (26 or more employees)

Doing Business and Signing Contracts.

Short Answer: Written agreements make for good relationships. Handshake agreements are ripe for misunderstanding and breach.

Whether you're making deals with clients, customers, retailers, vendors, or any service provider, you should give the relationship close attention. What does that mean? If it's a small, one-time service in which you agree to pay $100, it might not be worth preparing a contract. However, for every instance in which the potential loss (whether financial or liability-based) exceeds what it would take to prevent such a loss, it's advisable to execute a written agreement.

Your key terms are usually going to be: (1) payment terms and (2) risk allocation (limitation of liability and indemnification). Depending on the exposure to your intellectual property (or theirs), a third key element might be confidentiality and invention assignment.

You know how to negotiate and understand payment terms. When it comes to risk allocation, you're probably going to require the assistance of counsel. The majority of indemnification clauses and limitation of liability clauses are objected to and oftentimes require counsel to negotiate in order to move forward.

The good news is that these agreements are quick to review and/or prepare. They won't cost much and can often be turned around quickly.

Finally, if you're not going to have a written contract, at least detail the agreement in an email. We once won a $140,000 case based on an email, which a judge determined to be an enforceable clarification of a contract. However, it's not the case that all emails will be held to constitute a binding agreement so we highly recommend seeking legal assistance in preparing any substantive contract.

V. Terms of Service and Privacy policy

Short Answer: If you collect customer information on your website, you must have a privacy policy. If your website is anything beyond informational, you should consider having a Terms of Service.

Do you have a website or an app? If so, you might need a Terms of Service and Privacy Policy. Your terms of service limits your liability, identifies the proper use of the website or app, sets forth the parameters under which you can deny some on the use of the app or website, and provides indemnification from third parties.

If you wouldn't do business on a handshake, you shouldn't let people use your site with the equivalent of merely logging on. We can prepare both your TOS and Privacy Policy if/when the need arises.

On May 25, 2018, the European Union's new privacy law, the General Data Protection Regulation (GDPR) comes into effect and will apply to the data of EU individuals no matter where their data may reside. **The GDPR applies to you if you collect, record, organize, store, or perform any operations on data relating to an individual in the European Union —*even if you are located outside of the EU*.** We're here to make sure you're prepared! To ensure compliance, and avoid hefty fines, we can review and revise your Privacy Policy and Terms of Service (or draft compliant versions at the outset) and provide general guidance to ensure your customer-facing communications and record keeping meet GDPR standards.

Last month, California passed the **California Consumer Privacy Act of 2018**, which is the strictest data privacy regulation of any state thus far, which goes into effect in 2020. It may seem early to prepare but we can save you money by doing both simultaneously (rather than working with the GDPR now and California's requirements in a year).

VI. Raising Capital

Short Summary: There are five ways to fund a business: (1) with your own capital; (2) from the reinvestment of profits back into your company as it grows (this is typically the slowest but sometimes more robust growth); (3) with capital raised from friends and family; (4) with capital from outside sophisticated investors like venture capitalists or angel investors; and (5) with a loan from a bank or other lending institution.

Raising capital through friends, family, outside investors, or banks or lending institutions will almost certainly require the services of counsel in negotiating and preparing the requisite documentation. That said, let's briefly explore each of these options.

Friends and Family

When raising capital from **friends and family**, it's often tempting to disregard the importance of fully documenting the transaction. We have litigated numerous disputes between friends/family members, most of which take years to resolve and cost hundreds of thousands of dollars. It's simply not worth taking these investments lightly. Make sure that everyone is on the same page. The easiest way to do that is to have a written agreement, whether it's a grant of equity or a promissory note to repay a loan.

Outside Investors

Raising capital from **outside investors** often feels like winning the lottery. It is not. While venture capital investments are often vital to a company's success, they are just as often the cause of a young company's failure. Venture capitalists seek much larger returns than ordinary investors or lenders. As such, they often push growth at a faster rate than the company can handle, and they do so by acquiring management rights in conjunction with their investment. This is not to say that venture capital lending is bad – it's often in the company's best interest.

However, make sure you've considered all possible opportunities and futures before handing over equity to outside investors.

Bank or Lending Institution

If you are able to grow your company with a loan or line of credit from a **bank or lending institution**, this is often the safest route to take. Unlike other lenders, they will not have any control over the management of your company. Capital from lending institutions is also a great bridge to get a company through periods of growth or financially tight periods, until the company can secure a larger amount of outside funding through an equity grant. It would benefit you to have counsel review any promissory notes, especially those that include a security agreement and/or a personal guarantee.

VII. COMMERCIAL LEASES

Short Summary: Commercial Leases are often presented by the lessor as an adhesion contract (aka a "take it or leave it" contract). Often, prospective landlords will either imply or explicitly state the lease is not negotiable. In reality, there is usually some flexibility that allows for moderate modifications. However, for the most part commercial leases are not negotiated to the same extent that other business contracts are negotiated. For this reason, and because most landlords require the owners of young businesses to personally guarantee company lease obligations, it's critical that you negotiate those terms that could have a substantial impact on your business or your personal assets.

All businesses that operate a brick and mortar storefront or rent office space are eventually going to have to negotiate a commercial lease. Different rules apply to commercial leasing than those that apply to residential leases. Simply, there is an expectation that the parties to a commercial lease are generally more business savvy and sophisticated than the average residential tenant. As such, many of the protective provisions that apply to residential leases do not apply to commercial leases. Further, because it is not anticipated that a commercial tenant will reside in the commercial space, many of the residential requirements regarding habitability, repairs, and nuisances apply less (or not at all) to commercial leases.

Thus, it is critical that you full understand the requirements, duties, and rights set forth in your commercial lease. Commercial leases are often drowning in fine print and legalese, and are typically written for the sole benefit of the landlord. To this end, while many of the terms may *not* be negotiable, simply understanding the terms can help the tenant ensure their own compliance or reject a potential property in favor of another location with more favorable terms.

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VIII. How to Avoid Litigation.

This section might be better entitled, *Tales from the Courtroom*! Many of us at HSO Law, including the founder Heather Orr, are former litigators, who came over to the transactional side of law to better prevent the fights we were waging in the courtroom. The following are some of the strategies we recommend to avoid needless litigation:

1. Memorialize agreements in writing.

This one should go without saying. We have fought many lawsuits that could have been avoided, or made less costly, had the parties taken a moment to memorialize their agreement in writing. There is a reason why a contract requires a "meeting of the minds." Often, the very act of putting your agreement down on paper can reveal that you had different understandings as to the terms of the agreement. While not ideal, it can be as simple as memorializing an oral agreement with a quick email confirming your conversation. A great amount of litigation is initiated because either (1) the parties truly had different understandings as to the terms of the agreement or (2) one party seeks to take advantage of the fact that there was no written agreement. And even if, under scenario 2, you prevail and successfully defend against their claims, you're going to spend a significant amount of money doing so. If you have an airtight contract, especially one with a prevailing party attorney's fee clause, you make it much less likely that they'll even find an attorney willing to take their case.

2. Conduct research on people or companies before doing business with them.

All too often, we find ourselves representing a client involved in a legal dispute that would have been foreseeable (and preventable) had the client done its due diligence before getting into bed with a bad-actor. We define the term bad-actor

loosely to mean persons or companies that lack integrity, honesty, professionalism, or competence. These types of people will not only do harm to you and your business, but they will likely also do harm to other parties with whom you do business, exposing you to liability from third parties.
Our advice prior to entering into an agreement to work with someone in any significant capacity (employee, independent contractor, partner, or any other business associate upon whom you will rely):

- Take your time;
- Ask around and request multiple references;
- Have multiple frank conversations with them in different settings;
- Run multiple Google and social media searches; and
- Run a litigation search to determine if they've been a party to any previous lawsuit.

The best indicator of future behavior is past behavior, especially when it comes down to the manner in which one conducts business. We've handled numerous fraud and embezzlement cases. Our clients were seldom the first person defrauded by the defendant. There was almost always a history of bad acts. A little research goes a long way to preventing unnecessary litigation, and the possible damage to our company.

3. Invest in legal advice.

While it's true that we have a vested interest in telling you to hire an attorney, that doesn't make it any less true. The majority of litigation in which our clients have been involved has dealt, in some respect, with the interpretation of a contract. More often than not, litigation could have been avoided or narrowed in scope had the contract been drafted or reviewed by an attorney.

Legal advice can be expensive. But cost is relative. You may invest $500, $1,000, $2,000, or more to have an attorney draft or review your contract and, in doing so, end up avoiding a $100,000 lawsuit. Additionally, when something goes wrong—and it will at some point—you will have a relationship with an attorney who will likely be willing to help you on short notice.

4. **Use attorney-client privilege.**

Any correspondence you send on a day-to-day basis is discoverable. Ask a first year attorney at a big law firm what "document review" entails. These days, a significant portion of "doc" review is reading thousands of emails written by people who sincerely believed they would never be seen again. The stories of embarrassing and damaging emails could fill novels.

In the event that you or your company end up in a dispute, all of your emails and other written correspondence are subject to review by the other side, with very few exceptions. The most powerful exception is attorney-client privilege. If you have a potential dispute brewing, from the moment you recognize it as such, you should include your attorney on your correspondence and label it "attorney-client privilege," thus putting it out of reach of the other side in the event that litigation ensues.

5. Keep contemporaneous writings.

Evidence rules, as well as judges and juries, favor contemporaneous writings over oral testimony recalled months or years later. Thus, after any event that might someday give rise to a dispute, write down your summary of the details of the event on the same day or in the same week. Date the document and store it for a rainy day.

6. Obtain insurance, it's a great backstop.

Let's face it, bad things happen to good people. You might do everything right and still get sued. If you're in business long enough, you *will* make mistakes. If that mistake lands you in a courtroom, the litigation expenses alone could bankrupt your company, and that's before the case is won or lost.

I recommend using an insurance broker who can explain to you the different types of policies available to you, the different policy limits, and can point you in the direction of reputable insurers.

IX. New Offerings!

HSO Law is happy to announce that we are expanding our practice representing businesses into emerging industries, including California's brand new cannabis industry. We will be offering services under the name California Cannabis Lawyers.

CALIFORNIA
CANNABIS
LAWYERS

HSO Law will now also offer trademark searches and trademark filings.

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X. How We Support You.

Here at HSO Law, we live and die by the three "Es": efficiency, effectiveness, and ethical representation. In order to be effective for our clients and keep costs low, we actively adhere to the following:

1. Email first, call second. Because we're often in meetings or focusing on projects, we're not always available to take unscheduled phone calls. If you need to talk, shoot us an email to set up a time. We can often schedule a call same day or next day. You're also likely to get a faster response to an email than to a voicemail, so simple questions are best handled via email.
2. We respond to emails within 24 hours (weekends/holidays excluded). If it's an emergency, identify it as such and we will respond as soon as possible.
3. We have multiple attorneys with different (but often overlapping) specialties. Some projects require contributions from multiple attorneys. However, we will not needlessly staff multiple attorneys to a project; we will proceed in the most efficient manner practicable.
4. We now offer most of our transactional services for flat fees, though some projects (particularly those with less predictability) will be billed hourly.
5. For all projects exceeding $1,000, we require an advance deposit. All projects under $1,000 will be billed monthly.
6. For transactional projects less than eight hours in scope, we strive to have deliverables within six business days, though you will often receive them sooner. For projects larger than eight hours, we request at least two weeks advance notice. However, we respect that the time sensitivity of certain projects is often out of your control and we will do our best to meet your timeline even if it's shorter than the above.
7. We now also offer expedited delivery. If you require a small project turned around same-day, we can deliver for a $25-$75/hour surcharge, depending on how quickly you need it. Of course, we are a small firm and expedited projects are subject to our availability.

BUSINESS FORMATION PACKAGES

- **Company Formation Platinum Package - $6,000**
  - LLC or Corporate Filing
  - Operating Agreement or Bylaws
  - Filing of initial Statement of Information
  - Standard Customer or Client Service Agreement (for use with all of your customers/clients).
  - Website Terms and Conditions and Privacy Policy
  - 2 rounds of revision to each of the above contracts
  - HSO Law will act as your Agent for Service of Process
  - **PLUS the Full Employment Package (see below)**

- **Company Formation Golden Package - $4,000**
  - LLC or Corporate Filing
  - Operating Agreement or Bylaws
  - Filing of initial Statement of Information
  - Standard Customer or Client Service Agreement (for use with all of your customers/clients).
  - Website Terms and Conditions and Privacy Policy
  - Form Employment AND Independent Contractor Agreement
  - 2 rounds of revision to each of the above contracts
  - HSO Law will act as your Agent for Service of Process

- **Company Formation Silver Package $3,000**
  - LLC or Corporate Filing
  - Operating Agreement or Bylaws
  - Filing of initial Statement of Information
  - Standard Customer or Client Service Agreement (for use with all of your customers/clients).
  - Form Employment *or* Independent Contractor Agreement
  - 2 rounds of revision to each of the above contracts

- **Company Formation Bronze Package $2,500**
  - LLC or Corporate Filing
  - Operating Agreement or Bylaws

- Filing of initial Statement of Information
- Standard Customer or Client Service Agreement (for use with all of your customers/clients).
- 2 rounds of revision to each of the above contracts

- **Full Employment Package - $3,000**
  - Form employment and independent contractor agreements
  - Employee Handbook
  - California law employment compliance file containing all standard employment forms (20 different forms, including a Severance Agreement, grievance forms, employment applications, discipline notices, discipline procedures, final paycheck acknowledgments, interview questions, harassment checklists, requests for accommodation, and much more).

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BUSINESS MAINTANENCE PACKAGES

In 2019, HSO Law's standard hourly rate of $300 will increase to $350, which will be our first fee increase in 6 years. Committing to a Business Maintenance Package will automatically lock in the current rates for that package for a minimum of 3 years, as long as the monthly payment is timely made each month.

- Annual Corporate Filing Compliance Package **$1200**
  - Update and file annual Statement of Information
  - Have HSO Law serve as your Agent for Service of Process
  - Prepare annual minutes and fulfill other corporate compliance requirements
  - Annual review and revision of (1) employment agreements, (2) independent contractor agreements, and (3) customer/client service agreements

- Monthly Pre-pay Hourly Discount Package (unused hours rollover but will not be refunded).
  - Pay for 20 hours on the first of each month for $6,000 per month. (14% discount)
  - Pay for 10 hours on the first of each month for $3,250 per month. (7% discount)
  - Pay for 5 hours on the first of each month $1650 per month. (5% discount)