



Keating, Ritchie & Swick

8050 Hosbrook, Suite 200

Cincinnati, OH 45236

Phone: (513) 891-1530

Fax: (513) 891-1537

krslawyers.com

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BUSINESS & EMPLOYMENT LAW

## NEWSLETTER

### TIPS FOR AVOIDING LAWSUITS (and what you should do if sued)

**1. Practice preventive lawyering.**

Meet with your lawyer at least once a year (preferably at your place of business) even if there are no current issues. Lawyers love to get out of the office and see where their clients work. And these meetings give the attorney the opportunity to identify issues before they become real legal problems. Think of it as your annual legal physical.

**2. Have your attorney read legal documents before you sign them.**

It is far less expensive to have an attorney alert you to potential pitfalls in advance than it is to extract you from problems once you have signed a contract. Lawyers call this the "pay me now or pay me later rule." Pay me a little now to keep you out of trouble, or a lot more later to get you out of trouble.

**3. Put all agreements into writing.**

This avoids any misunderstandings as to what, if anything, was agreed upon. The writing should preferably be drafted by you attorney. Keep copies of documents you sign.

**4. Read documents before you sign them, including the small print.**

You would be surprised at how many people only read the basic "what, when and how much"

and ignore small print that may add additional responsibilities or even change the basic agreement. Read everything. And if you are preparing a contract that has small print and "boilerplate," make sure that the other party reads it, understands it and initials it.

**5. Have a knowledgeable, courteous staff.**

Simply stated, a good staff is a blessing; a bad staff is a curse. A good staff helps your customers and makes it easy for them to do business with you. A bad staff literally drives away business and can create all kinds of legal problems. If you have a good staff, reward them. If you have a bad staff, retrain them or fire them.

**6. Promptly return phone calls and emails.**

Almost nothing gets people more aggravated than being ignored. Our office has a policy of responding to the call when it is received. If we cannot, we have an absolute rule that the call will be returned within 24 hours at the latest. Similarly, if you use a voice mail system, make sure it is easy enough for the customers to understand and use.

**7. If you make a mistake, try to correct it as soon as possible.**

Most people realize that not everyone is perfect and that everyone makes mistakes. Most people will accept a sincere apology, especially when it is coupled with the offer to "make things right." Conversely, people do

not like being blamed for things that are not their fault. Nor do they like the buck being passed to someone else.

**8. If you have a business, have your attorney listed as the statutory agent with the Secretary of State.** A statutory agent is the person the business designates to receive legal notices and lawsuits. Having your attorney listed as the statutory agent assures that the attorney will receive a copy of lawsuits that are filed so that he can respond in a timely manner.

**9. Maintain an adequate amount of insurance.** Some might argue with this, thinking “If I do not have insurance, they will leave me alone.” Not true. Not only will they not leave you alone, they will try to collect out of your non-insurance assets. Do yourself a favor and have as much insurance for as broad of coverage as you can comfortably afford. That way not only are your assets protected, but the insurance company will most likely hire a lawyer to defend you, at its costs, in the event you are sued.

**10. Be organized.** Maintain organized records regarding every employee and every transaction. Enough cannot be said about having an organized business. If you are not organized, make sure you hire someone who is. Many a case has been lost because evidence that should have been readily available was lost. Being organized makes it easier to explain your position in simple terms. Keeping it simple is an important part of every case.

**11. Screen your employees before hiring them.** And monitor all employees’ performance issues. Also make sure that subordinate employees are properly trained and supervised.

**12. Have a company handbook detailing what is expected of the employee.** Make sure that the handbook specifically states that it is not an employment contract. If you do have an employee whom you want to be other than an employee-at-will, make sure to have an employment agreement.

**13. Do not destroy or alter records.** Many people have heard of cases where records have been changed. The truth is, however, that when records are changed, the truth almost always comes out and the person who changed the records looks very bad. The bottom line is that we must all “play the hand we are dealt.” If there is a bad fact, trying to hide it just makes it look even worse. Better to acknowledge and deal with it.

**14. If you receive suit papers, notify your attorney and your insurance company immediately.** Also put together as much information as is possible regarding the claim. This includes all documents, photos, emails and anything else in your possession regarding the transaction or event. Leave it to the lawyer to sift out what is not needed. Do not give a statement to anyone from the adverse side that contacts you.

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