Business Law
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Legal Matters®

Protecting your e-commerce business from legal pitfalls

It can be relatively easy to make a website and start an e-commerce business, or to start selling online the same products you already sell in a brick-and-mortar shop. It's something you can even do on your own, depending on your skills and needs. With more people purchasing online, it can be a great way to keep your business afloat.

But an e-commerce business also has its fair share of legal pitfalls, and because you sell online, you are essentially subject to the relevant laws in every state.

If you have a new or expanded e-commerce business, it's helpful to consult a business attorney to ensure your systems meet required legal standards. Otherwise, you could open yourself and your business up to lawsuits and even closure.

Here are some key areas you need to think about in order to protect your e-commerce business from legal challenges:

Privacy issues and data security

As an e-commerce business, you collect significant amounts of customer data by necessity. That includes sensitive information such as addresses, phone numbers and credit card information.

Some states require companies to have policies in place to protect customers' personal information. In some cases, your business could run into trouble if you have a customer in a state with strict rules for data protection and you don't meet those requirements.

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To avoid legal issues, develop a policy to safeguard your customers' personal data.

Your policy should explicitly state rules related to data collection and "cookies," laying out what data you will collect from site visitors and how you will use and store the data.

All policies should be easy for users to access on your site and provide a clear way for users to request that you not sell their information to third parties.

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Tips for succession planning

The success and longevity of a small business depends on a well-thought-out succession plan.

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For a family business, you want to evaluate who else within the family can run the business and whether you have to look beyond family members for future stages of the business.

An experienced attorney can help the key stakeholders in your business create a succession plan or review your existing plan.

One way to plan for the future is to choose a successor. Here is a basic how-to-guide to help you get started:

1) Think about who your successor should be. This is an important decision that shouldn't be taken lightly, and should be on your radar at least 15 years before you expect to retire. Consider who within the business is most qualified to lead the company going forward. A mediator or consultant can often be helpful in making this assessment for a family business, where emotions tend to run high around succession plans.

2) Create a timeline. Decide well in advance when the control of the business will shift to your successor, allowing plenty of time to transition. Be flexible and open to your successor's suggestions and ideas for the business.

3) Set up a training plan. Define all of the main areas of the company, and give your successor time to work in all of them. That means everything from the highest executive level parts of the business to the most basic tasks. Work with your successor to strengthen his or her understanding in any areas of difficulty.

4) Lay out your own plans for retiring. Having a plan for your retirement will make succession much easier and give both your successor and other members of the team clarity about what's next and when.

5) Execute the plan and exit. When the time comes, step aside to allow the next leader to take over. A carefully laid-out succession plan will make this possible.

Other choices for succession planning

Handing over company leadership to a successor is only one option. Here are some other ways to go about planning for the long-term success of your business after you exit:

Find a buyer. Sell your interest in the company in exchange for cash or other assets. Bear in mind that you might have to pay capital gains tax.

Transfer your interest by agreement. Consult with an attorney to draft a buy-sell agreement that plans for the sale of your interest in the business at a certain time. The buyer agrees to purchase your business interest at fair market value if and when the indicated event occurs. It can be set to execute at death, or at a prior time, such as when you retire, if you become disabled, or if you get divorced.

Create a Family Limited Partnership for the business. It can be beneficial to create a Family Limited Partnership (FLP) and transfer a family business to it. An FLP is an entity owned by two or more family members that allows each member to buy shares of the business and to transfer assets between family members tax-free. It includes both general and limited partners. General partners bear 100% of the liability and control all management and investment decisions, while limited partners don't have full voting power and don't share liability. When one family member is ready to leave the business, it's easy to transfer it to another.

Set up a private annuity. A private annuity allows you to transfer your interest in the business to a family member or another buyer in exchange for their agreement to make periodic payments to you for the rest of your life, or through the lifetime of a surviving spouse. A private annuity has the benefit of avoiding gift and estate taxes.

Transfer your business interest to an irrevocable trust. If you create an irrevocable trust, such as a Grantor Retained Annuity Trust (GRAT) or a Grantor Retained Unitrust (GRUT), you can transfer your business interest into the trust while continuing to receive income for a defined length of time. When the time period elapses or you die, your interest in the business goes to the beneficiary of the trust.

Transfer your interest using a self-canceling installment note (SCIN). An SCIN is used to transfer value out of an estate with no gift tax cost. Through an SCIN, you can transfer your business to a buyer in exchange for a promissory note with a "self-cancellation" provision. The promissory note requires the buyer to make a series of payments to you until you die, at which point the note and the outstanding balance are both canceled. At that time, the remaining balance on the note is transferred to the buyer tax-free and the buyer doesn't have to pay any more for it.

Security concerns due to remote working continue

A recent Twitter hack affected the accounts of several celebrity figures, including Barack Obama and Kanye West, and highlighted the need for businesses of all types and sizes to stay vigilant about cybersecurity as more workers and vendors work remotely.

When shelter-in-place orders arose in March, many businesses very quickly moved to remote work, sending workers home with laptops that lacked proper anti-virus and security software and then never doing anything about it.

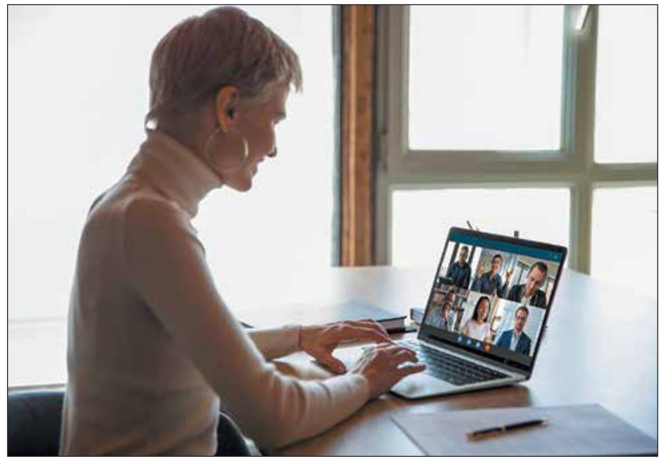
In many cases, workers are using their own personal devices to conduct business transactions.

In many cases, workers are using their own personal devices to conduct business transactions. Those devices are even less likely to have proper protections in place, and they are more likely to be vulnerable if they are being shared with other family members at home.

In the Twitter incident, the hackers engaged in a planned attack and accessed the direct messages of 36 accounts of workers with administrative access.

The increased level of distraction during remote work likely made those workers more vulnerable, in that they might not have been as likely to properly identify phishing messages or calls as security risks.

Even if you think you have security software enabled on the devices you and your workers are using, be aware of how the software works. Some security software is set up to identify hackers by tracking the day-to-day habits of the user. That might include what days and times of day the system is in use and for how long. Systems set up that way might become less effective now that remote workers' patterns of device use have drastically changed.



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Protecting your business systems from attack starts with training your workers. Set up a virtual session to educate everyone about system security and procedures to protect company data.

It's never too late to implement security measures. Purchase subscriptions to anti-virus software for everyone and implement two-factor authentication.

If you don't already have it in place, consider using either a free or paid end-to-end encryption service. End-to-end encryption provides a secure line of electronic communication that is protected from third parties and only accessible by the sender and recipient.

States enact COVID-19 liability protections for businesses

States have started to pass laws to give businesses and health care providers protection against COVID-19-related lawsuits.

The goal of these laws is to block businesses from being sued by people who contract the coronavirus under certain circumstances and want to claim that a particular business is at fault. Business have been concerned about COVID-19 lawsuits and have been waiting for federal legislation to make them immune from suits brought by sick workers and customers.

As of late July, at least 12 states had enacted measures to limit liability for businesses. The growing list includes Alabama, Arkansas, Georgia, Iowa, Kansas, Louisiana, Mississippi, North Carolina, Ohio, Oklahoma, Utah and Wyoming.

Those laws vary from state to state, and might apply to suits brought against individuals, businesses and/or health care facilities.

Several states had passed laws that specifically protect certain health care facilities, including Arizona, Massachusetts, New Jersey and New York.

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Lawsuits brought by customers

If you are selling goods online, you open yourself up to customers suing you for product defects, even for products you don't actually make.

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In 2018, Amazon faced a lawsuit like that when a customer was blinded in one eye after a defective dog collar she bought from a third-party seller on Amazon broke, causing her retractable dog leash to hit her in the face. A federal appeals court found that Amazon was liable for the customer's injuries.

You might think that your business is so small that nothing like that could happen to you. But even for smaller e-commerce websites that case makes it clear that you need a policy protecting yourself from liability and describing any warranties for the products you sell.

Start by reviewing your "terms of use." The more detailed you make your terms of use, the better you will be protected should an issue arise. Be clear as to whether you sell products from third parties. Lay out how a customer can return a product or cancel a subscription.

Website security and fraud protection

Keeping your website secure is critically important. Application Performance Management is a type of software that can help you avoid fraud by finding and fixing issues on the backend that could open your site up to fraud.

Any data breach must be reported, both to your customers and to the public. The deadline for doing so varies by state, but many require reporting of a breach within 45 days.