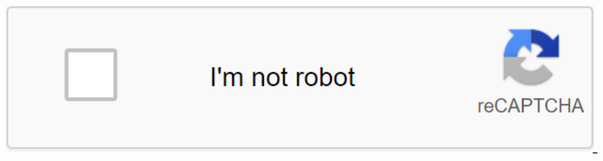

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New citizenship questions and answers

March 1, 2008 15+ my read Opinions expressed by Entrepreneur contributors are their own. Intellectual Property Q: If I obtain a patent on my invention, does that mean I have the right to make, use and sell my invention? A : Do not assume that once you have acquired your patent, you will then be able to make and sell your invention free and clear. One of the most common misconceptions about getting a patent is that it gives you the right to exercise your invention. The concept of exercise refers generally to the right to make, use and sell your invention without prejudice to the rights of others. In fact, the only right conferable by a patent is the right to exclude. More specifically, a patent gives the right to exclude or prevent others from making, using, selling or offering to sell your invention in the United States, or importing your invention into the United States. In the case of utility patents, this right is generally granted to exclude for a period of 20 years from the filing of your patent application. For design patents, this right lasts for 14 years from the issue of your patent. Q : When should I file my patent application? A : The question of when to file often depends on whether you are interested in protecting rights exclusively in the United States, or whether you are also interested in achieving foreign protection. In order to maintain U.S. protection, your patent application must be filed within one year of any public disclosure, sale or offer for sale of your invention. This one-year U.S. deadline, however, does not apply to most other countries. Rather, the rule in most countries is that patent applications must be filed before your invention is made available to the public. Thus, most people will want to make sure that their patent applications are on file before their inventions are disclosed to outsiders. However, this does not mean that you must file your patent application in each country that you wish to do business with before your publication. As long as you submit your U.S. application before making your invention available to the public, you will still be able to pursue patent protection in most foreign countries if you also file your corresponding foreign application within one year of the U.S. one. Authors/lawyers: Catherine J. Holland, J.D.; Vito A. Canuso III, J.D.; Diane M. Reed, J.D.; Sabing H. Lee, J.D.; Andrew I. Kimmel, J.D.; and Wendy K. Peterson, J.D., practices lawyers at Knobbe, Martens, Olson & Bear LLP, one of the largest and most respected U.S. law firms specializing in IP law. Collaboratively, they are the authors of intellectual property, available from Entrepreneur Press. Business Contract Q : In vendor contracts, how can I change the section that specifies that the contract is automatically renewed every year? A : This is easily changed, as does all the provisions of a pre-printed contract. If there is a of the contract that is designed with terms specific to your company, ask that a sentence be added that says that notwithstanding all other terms of the contract (this wording is important), the contract shall terminate after XX years, or automatically renew no more than XX times. If the contract is fully oppressed, ask for this to be entered on the preprinted contract page. Either way, make sure that the terms of the agreement you wish to change change in writing within the written agreement that you sign. Q :What are some of the most important things I need to do when signing a contract? A: There are some very simple steps you can take that will protect your personal assets and give your business an advantage in a contract dispute. First, make sure that the signature block at the conclusion of the agreement indicates the full legal name of your company rather than your personal name. Your personal name, as a contract sigr, can be signed under your signature, but the contract should clearly state the full legal name of your company as the entity that enters into the contract. To gain the upper hand in contract disputes, make sure that each contract you sign has two originals, and keep one of them. Initial each side of both final signed contracts with ink in a color that will not copy well, such as red. This discourages anyone from rewriting part of the contract in order to benefit one side and present the rewritten contract as original. Author / Lawyer: Laura Plimpton has 26 years of experience as a corporate lawyer, business owner and management consultant. She has reviewed or drafted more than 12,000 contracts. She is the author of Business Contracts, available from Entrepreneur Press. Hire and fire Q: Can I monitor my employees' emails? Do I have to tell them? A : Employers monitor employees' e-mails for three primary reasons: 1) to prevent/address workplace harassment and discrimination, 2) to prevent disclosure of trade secrets and unfair competition, and 3) to improve employee performance and productivity. However, it is important for employers who want to monitor employees' emails in order to reduce employees' reasonable expectations of privacy in their emails. Most courts have acknowledged that employees have naturally reduced expectations of privacy when using employers as equipment, such as computers and mobile phones. In order to reduce such expectations, all employers should adopt a policy that clearly states that the employer computers provided are employer property, should be used for legitimate business purposes and that the employer reserves the right to monitor for the reasons set out above. Q : What is family leave, and am I obliged to give it? A : The Federal Family and Medical Leave Act (FMLA) is the primary federal statute requiring covered employers --those with 50 more employees within a 75-mile radius- to unpaid leave of up to 12 weeks to eligible employees. Most importantly, FMLA states that when family and medical leave requirements under federal and state law differ, the employer must comply regardless of the provision providing greater family leave rights to the employee. FMLA provides up to 12 weeks per year of leave for: 1) birth, adoption or foster care placement of a child, 2) care of a family member with a serious health condition, or 3) the employee's own serious health condition. Leave is unpaid (except when leave, sick leave or paid leave is used), but employers are required to continue group health benefits during the leave. The employee has the right to return to the same or a comparable position at the end of the leave. A : serious health status includes pregnancy-related disabilities. Specifically, FMLA's definition of a serious health condition includes any period of incapacity due to pregnancy or prenatal care. Employers should note that some states, such as California, have separate statutes requiring pregnancy disability leave. FMLA also covers a pregnancy-related disability of an employee's family member. FMLA applies to employers with at least 50 employees. Eligible employees are those who: 1) have worked for the employer for more than 12 months before the start of leave, 2) have worked at least 1,250 hours in the 12 months before the start of leave, and 3) work in a place where the employer has at least 50 employees within 75 miles of that location. Q : What do I do if I want to fire an employee who is not doing his job well? A: This is a complex question, the answer to which depends a lot on the circumstances. Communication with employees is critical, and no termination should come as a surprise to an employee. Consequently, although the employment is explicitly at-will, it is important to advise poorly performing employees both on their exact performance deficiencies and how they can improve their performance in these areas. Equally important is documenting performance advice along the way. By following a few simple guidelines, employers can justify termination decisions if and when they are challenged. Employees are also much less likely to claim claims if they believe their employer has been fair to them and given them sufficient opportunities to improve their performance over time before dismissal. Q : What if I have to let an employee go because I can't afford to pay her? A : Maintaining at-will employment relationships gives employers maximum flexibility in the event of economic downturns. Honesty is usually the best policy, and if an employer really can't afford to pay certain employees, it should be straight with the affected employees and not make up grounds for dismissal. Often, economics can be the easiest way to However, in the event of dismissal or lay-off, employers should ensure that they do not break any promises made to the employees concerned about severance pay. Q : How can I ensure that my employees do not disclose my company's trade secrets? A : Since trade secrets derive their value and legal importance from not being known to competitors, employers must establish reasonable steps to maintain their confidentiality. Employees who have been exposed to trade secrets may use them to compete with their former employers when they leave the company. To avert this, employers should consider: Requiring employees to sign non-disclosure agreements Conducting exit interviews for all outgoing employees Using personal identification codes and passwords for computer accessIng valuable information only on a need-to-know basis That requires confidentiality agreements or headings on documents that indicate qualifying information as confidential or proprietary To restrict access to facilities Using locked files for hardcopy materials That require confidentiality agreements from all third parties; including clients and consultants Using security on-site Training employees about the importance of trade secrets protection and employee monitoring are also invaluable. Author/Lawyer: Tyler M. Paetkau, a partner at Littler Mendelson, PC LLP, is a former chairman and adviser to the state Bar of California's Labor and Employment Law Section. He is the author of Hiring and Firing, available from Entrepreneur Press. Forming a Partnership Q: What is the difference between a lender and an investor? A : When you go into business with others, the question of control is always an issue. The reason is that the time frame required to build a successful business is not always the same as the lender who wants his or her money back within a certain period of time. And it's not always the same time frame as the investor who wants to see multiple returns on their investment as quickly as possible. The best course of action for the entrepreneur is usually to reinvest all profits back into the business to achieve the early growth so important to the later success of the business. The problem is that the lender usually has a security interest in the assets of the business and can seize them if the business does not meet its obligations. On the other hand, an investor may not have that collateral interest but is likely to look over the business with a cautious eye all the time. The issue of control is a serious issue to investigate before getting involved with either a lender or an investor. Q : What is the biggest problem in a general partnership? A : Although it is important to submit appropriate paperwork to create an LLC or a business, a general partnership can be created by no more than one hug a handshake. In fact, the mere act of working together, even without a formal document, document, create the legal relationship. This applies to husband and wife as well as two or more unrelated persons. The problem is that in a general partnership there is a solid responsibility. This means that each partner can create monetary obligations for the partnership and all partners will be personally responsible for the entire debt, even if they knew nothing about it. The creditor will usually go after the deepest pockets, in other words the person who has the most money. Be sure you know what each of your partners is doing to protect you against this problem. Your best protection is to form a legal entity, whether it's an LLC or a company. This will eliminate the problem completely. Q : What is the problem when parents let children take over the business? A : When you start a business, it's no secret that your company's bank account isn't very large. As a result, most landlords, banks and suppliers of significant equipment will not accept a company signature on their leases, loans and contracts. They will insist on personal signatures and owners' guarantees. When children take over the business, the owners' signatures are usually still on the original contract. If something negative happens, these signatures become critical. Parents usually have more assets and money than the children. These assets become vulnerable to people seeking obligations to pay. Everything that the parents originally signed – such as a franchise, a loan, a car, a printing press, etc.--is fair game, although mom or dad may not have been involved in the business for many years. To avoid this problem, you should treat the transition to the next generation as much as a sale to a stranger as possible. In this way, most creditors, lenders and the like will accept the transfer and respect the transition as a complete change of ownership. If it is a franchise, ensure that the company's shares are transferred legally, the franchisor has to accept the transfer and, if necessary, new franchise documents have been prepared. If it's a loan, don't allow the next generation to just adjust, lengthen or modify it. Get it paid and get your kids to sign a new loan document for additional credit or time. If necessary, the parents may agree to guarantee the loan for a limited period of time. If it is a lease, a rental or a purchase contract, make sure that new documents are created at the first opportunity. Author/Attorney: Ira Nottonson serves as a legal consultant and is a Law Review graduate of Boston College Law School. His previous clients include House of Pies, IHOP, Orange Julius, PIP Printing and Quickprint. He is the author of Forming a Partnership and co-author of The Small Business Legal Toolkit, both available from Press . Small Business Legal Tool Kit Q : Is my new employee an employee or an independent contractor? A: A: answer your question, you need to look at the question of control. The more control an employer exercises over a worker, the more likely it is that the employee is considered an employee. It is important to check the details of how the job is performed versus just check the results. The IRS looks at behavioral and financial controls, as well as the relationship between the parties. Behavioral controls include things like the amount of training provided, which leads the sequence of tasks, etc. Financial controls are the person responsible for the risk of loss, if the worker incurs expenditure which is not reimbursed and the like. Finally, any contractual relationship between the employer and the employee is examined, as well as whether employment-like benefits are granted to the employee. The IRS is also considering whether the job performed is an important aspect of employer business Writers/Lawyers: Theresa A. Pickner owns a law firm that specializes in business, taxation and property planning law. She has a J.D. and an LL.M. in taxation from the University of Denver. She is co-author of The Small Business Legal Toolkit, available from Entrepreneur Press. Ira Nottonson serves as a legal consultant and is a Law Review graduate of Boston College Law School. His previous clients include House of Pies, IHOP, Orange Julius, PIP Printing and Quickprint. He is co-author of The Small Business Legal Toolkit, available from Entrepreneur Press. Asset Protection Q : How can I protect my home if a judgment is set against me? A: Unless you're one of the lucky few living in Florida or Texas, who have unlimited community exemptions, the community estate exemptions in most other states are too small to protect your home. A Qualified Personal Residence Trust (QPRT) may be the answer. A QPRT is an irrevocable trust that takes the title to your home. If a judgment is filed against you, the judgment will not be attached to the home because you no longer own it. QPRT's are allowed by the IRS as a way to not only protect a home from creditors but also reduce property taxes. A QPRT may be used for a primary residence or a holiday home but not for income-producing properties. Q : What happens to my business if I can no longer run it? A: Maintaining the continuity of your business in case of illness or inability can prove difficult. In most cases, unless there is a partner or other key employee who can continue the company in your absence, you need to value the business of a professional and offer it for sale. The problematic aspect of this decision is whether you have a stock position that can be sold. For example, a consultant whose business is based on a particular expertise may not have anything to sell because an outsider may not be able to handle the concept. Even if a buyer is qualified, between entrepreneur and client does not not easily transferable. You may only have a client list to sell, which requires special negotiation. This also applies to massage therapists, personal cooks, and the like. If your business has more tangible assets such as a store, a small manufacturing business or a restaurant does, sales can be significantly easier and profitable. Author/lawyer: Robert F. Klueger (J.D.; LL.M.) is a lawyer in law for Klueger & Stein, LLP. He is admitted to the practice law in California and before the U.S. Tax Court. He is a Certified Tax Law Specialist (State Bar Board of Legal Specialization) and is AV rated by Martindale. He has been practicing law since 1974 and has represented clients against various tax authorities in all courts, including the U.S. Supreme Court. He is the author asset protection, available from Entrepreneur Press . *The book will be out in May, so there isn't a link yet. Yet.