

Legal Challenges in These Arizona Boom Times

Protect intangible assets and more

by Hani Sayed



Over the last 40 years, Arizona has grown rapidly and has become increasingly attractive for businesses and individuals. While this growth has been steady and predictable given a variety of factors such as weather, economics and affordable housing, the arrival of COVID accelerated such growth. In turn, Arizona has revealed itself as a thriving high-tech hub with a proficient talent base, and world-class higher learning institutions. Arizona is today a vibrant market largely made of privately held, middle-market companies.

So what are the legal issues that are now most relevant to growing businesses in the Arizona business community?

Corporate Structure Considerations

The pandemic pushed many traditional brick-and-mortar businesses to pivot to an e-commerce platform, resulting in greater exposure and exponential growth. With that growth, corporate ownership, management and operations change (e.g., bringing on additional stakeholders or raising rounds of funding). Even without extraneous events, it's not uncommon for companies to simply outgrow their initial corporate structure.

One of the many problems is operating a business under the wrong entity type (e.g., operating as an LLC when a better structure may be a S Corporation). This can create potential legal problems and might restrict further growth of the company. The type of entity through which a business operates determines factors such as liability and taxation of both the stakeholders and the business.

Businesses often discover that the originally formed entity at startup is no longer the appropriate type for the business as it operates today. An experienced corporate lawyer can evaluate a business's corporate structure "fit" and assist in any necessary adjustment.

Privacy and Data Security

Data privacy is one of the biggest concerns facing businesses today. Many companies are not aware of the limitations and regulations surrounding the routine data they collect by simply conducting routine business. While major data hacks occasionally make the evening news, smaller everyday events such as onboarding a new employee or clicking a link in a seemingly benign email implicate data security issues.

The rapidly evolving landscape of regulations governing companies' handling of consumer data has put obligations on companies to protect that data and regulates how they can use such data. Most laws require that permission be obtained from the customers to gather their data and provide options to the customer regarding the permissive uses of their data.

The bulk of privacy laws are state-enacted and apply to businesses conducting operations in that state — even if the business itself is not located in that state (e.g., an Arizona company selling a product into Utah or providing a service online to a customer in Virginia). While comprehensive federal legislation is still pending, there are existing federal laws that implicate data privacy in specific industries or in regard to specific types of data.

The importance of consulting a data privacy expert cannot be understated, particularly in today's online business environment.

Employment Matters

We all see the “HELP WANTED” signs everywhere we look. Employees are in demand and there is a more mobile workforce. With this, unfortunately, comes an increase in employment-related disputes such as discrimination, harassment, overtime or other wage-related issues. A growing company must take a conscious step from operating under informal HR practices to adopting more formal employment-related policies and operations.

The employer-employee relationship is governed by both state and federal laws, which cover a wide variety of matters. Many of these laws have notice requirements, meaning that employers are required to notify their employees of their rights.

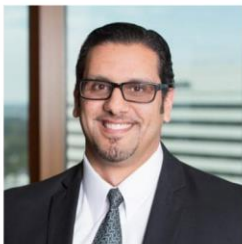
A good employment lawyer will assist a business in formalizing its employment practices to reduce the likelihood of an employment dispute and the business’s potential liability.

Technology, Branding and Proprietary Information

In today’s economy, intangible assets provide the largest competitive advantage. This includes, for example, technology, processes, proprietary information or branding that is unique to one’s company. This is the area the businesses often spend the most resources developing. But just having that competitive advantage is not enough. Protecting that advantage is imperative; otherwise, someone else is more than happy to just copy another business’s success!

This type of intangible asset is typically protected as “intellectual property,” and includes patents, which protect inventions (most things considered to be “new” products or “technology”); trademarks, which protect branding and brand identity; copyrights, which protect creative works; and trade secrets, which protect proprietary information that is beneficial to the company by the nature of it being known only to the company (such as customer lists and internal processes).

An IP attorney can evaluate a business as a whole and determine not only what IP it has but what IP it could obtain, to both protect what a business has while increasing its competitive advantage.



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