



THE CHANGING EMPLOYMENT LAW LANDSCAPE FOR NEXT GEN BUSINESS OWNERS

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A significant portion of successful businesses on Long Island are closely-held family businesses that are passed from generation to generation. Through hard work, risk and some good fortune, the older generation was able to build a strong and successful company to pass on to their children and grandchildren. As these businesses transition

to the next generation, however, they are also facing a new employment law landscape which poses additional challenges.

In many cases, the older generation of employer, who has had success doing things “their way,” is reluctant to change their employment practices. The next generation, however, seems to have a greater awareness of potential lawsuits and is more willing to get help. Often it is the next generation who realizes that in order to avoid liability and financial harm, they need to operate the business more formally and be far more aware of the ever changing laws that can cause harm to an employer. Unfortunately, this can lead to conflict if both generations are involved in management of the business and they disagree about making changes. The key to dealing with this problem is education.

Every business owner needs to understand what is happening in the employment law arena. In the last 10-15 years, the number of wage-related claims has grown exponentially. Employers cannot get away with practices that were commonplace 20 years ago. In the past, many businesses did not properly track their employees’ hours, failed to pay appropriate overtime, paid non-exempt employees a weekly rather than hourly salary, and paid employees in full or partially with non-documented cash payments. While the actual amount of payment may

have been agreed upon and inherently “fair,” today these practices will likely cause great economic harm to the employer. That’s because a failure to pay proper wages could lead to a six to seven figure liability that could significantly affect a business, and in some instances cause it to close.

Other types of claims are also a problem. While the number of discrimination/harassment cases has not increased as rapidly as wage cases, they have still grown significantly. These types of claims can cause significant financial hardship to an employer, especially a privately-held small or mid-sized business.

Overall, employees are far more aware of their rights than they were a generation ago, as they have greater access to information. Employees generally are aware that local, state and federal agencies exist to protect their rights. These agencies will investigate any claim an employee makes. Even if the employer is free from liability, defending a claim by an employee can cost them significant sums, in addition to causing personal hardship.

While an employer cannot avoid all claims against it, a better understanding of the law and how to investigate and document a claim, generally will avoid claims, or at least provide an appropriate defense. As businesses grow, it is even more important to be proactive. Waiting until a claim is brought or an employment-related issue arises, can cost an employer more money, time and aggravation. If you are a business owner, executive, or trusted advisor to one, consider the benefits of hiring an HR consultant or having an employment lawyer on retainer to help avoid potential liability, provide impartial advice in the case of family disputes, and also create a better work environment for employees.

Jeffrey S. Ettenger, Esq. is a partner at Lee A. Schwartz & Associates, PLLC in Melville. He concentrates his practice in the area of labor and employment law, assisting employers with their day-to-day employment needs, as well as all areas of employment litigation.