

A few of the most common and expensive mistakes that company directors make

Most company directors that I know are also shareholders, but few realise that as directors they have an unlimited personal liability and, all too often, they make basic mistakes. The law says that ignorance is no excuse and the big problem is that most solicitors and accountants will assume that when you ask them a question that a) you know what it is you're asking and, b) there's nothing else that you need to know!

With that in mind, here's a few of the most common errors: -

Most of us conduct the bulk of our business by email; yet few have a proper email signature that replicates that which the law mandates you must have on your letterhead, being the company's name, company number and registered office. Given that it's common to remotely reach agreements with customers and suppliers without them ever seeing your letterhead, the chances are that if things go pear shaped you could find yourself personally liable regardless of the fact that you're a shareholder with limited liability.

Forming a limited company with everyone having an equal share is a typical arrangement, but what would happen if you can't agree? Without a properly constructed shareholders' agreement you'll be in deadlock, which can easily lead to the company failing or you being caught in a situation that you can't get out of; a situation that is often compounded if there are bank or other borrowings backed by personal guarantees.

If you're paying yourself from the company without a director's service agreement or shareholders' resolution, then you may have to pay it all back. Likewise, paying yourself through an overdrawn loan account with the intention of declaring such payments as dividends is not only unlawful but, if not done right, can lead to you having to pay it all back with an extra tax charge to boot. If your accountant says that everyone's doing it so you'll be OK, change your account!

Using self-employed contractors to avoid the legal burdens of taking on employees could not only leave it open for them to steal your IP, data and customers, it could also open the door to HMRC delivering you with a big tax and employer's NIC bill, so make sure that you have the right contractor agreements in the first place.

Likewise, off the shelf terms and conditions of business from the web or those 'borrowed' from another business will almost certainly be unfit for purpose and possibly legally out of date. If you have a customer dispute, badly drafted terms and conditions will seriously undermine your legal position and undoubtedly lead you to the rich man's hobby of expensive litigation. Get them drafted by someone who understands your business and periodically review them as your business and the law changes.

Lastly, if you sell goods and services to consumers on the internet, by telephone, from a stall, a shop or in your customers' home, you are likely to be affected by changes in legislation coming into force in June 2014, with those selling online or off-premises seeing the biggest ones. The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 will apply from the 13 June this year and set out new rules on: -

- information to be given to customers
- the cancellation rights which your customer will be entitled to
- charges for any post-contract customer phone-lines you offer
- the express consent needed before you can charge for something

If you don't get it right, you may find yourself out of pocket and for more information and guidance go to: -
<http://www.tradingstandards.gov.uk/advice/advice-business.cfm>