

Three Areas Where Smart Businesses Invest

As this issue of EDGE highlights some of Chattanooga's best places to work, we are putting the spotlight on successful legal strategies we've seen our own clients implement across a variety of industries. Here are three key areas you may want to consider enhancing in 2021.

1. Internal Due Diligence

Engaging in ongoing "internal due diligence" is a great best practice for your company's long-term health.

We represent a local medical practice that engaged in multiple discussions with industry partners regarding a larger practice group affiliation. When the time was right to strike a deal, the practice was in great shape because it had actively conducted ongoing internal reviews of its corporate records, policies, systems, security protocols, and other critical internal processes to place it in a constant state of "readiness" to move quickly when the right affiliation opportunity arose. What's significant about this process is that, even if it had not resulted in a final transaction, the practice was in better shape from both a financial and operational standpoint as a result of these internal review efforts. These efforts resulted in the practice updating a number of outdated systems and procedures and adopting a more current set of corporate records and policies.

2. Good Recordkeeping: Databases and Employment Issues

When it comes to legal action, whether in the form of negotiating a new contract or pursuing litigation, the benefits of good recordkeeping cannot be underestimated.



For example, one of our logistics clients has a large portfolio of leased warehouse space located across the country. The company utilizes a service offered by its third-party leasing broker to organize all of its leasing documentation, from original leases to each subsequent amendment, as well as memorandums of major lease terms, in one electronic database. The database is organized by location, easy to navigate, and access can be securely limited. This simple administrative effort saves time and resources when a new amendment or lease arises for negotiation.

Recordkeeping is also critical for areas like employment, too.

When it comes to documenting employment-related issues, employers can never be too careful about what is put into writing. If litigation is initiated, it always seems to be true that if something is in writing... it is gospel. The "be careful of what you say" concept seems obvious, but so many business leaders and HR managers forget in the moment that every piece of correspondence creates a paper trail that can either be beneficial or detrimental in the future.

Employment lawyers routinely find themselves hoping for documentation that will support their position, but unfortunately, there often is none. So, it is imperative to remember the "e" in the word "email" stands for evidence. Documents produced as part of the employment process, including emails surround-

ing scheduling an employment counseling session, for example, must be precisely, rather than haphazardly, written. Inevitably, the vast majority of correspondence and employment-related materials will all be discoverable and sought in litigation. A writer must always remember that he or she may not be the end-user of any document or correspondence.

3. Data Privacy and Security

Any size and type of business should consider the data privacy, security, and breach notification laws that may apply to their operations.

Some laws, such as HIPAA, are specific to health care entities, although they can apply to non-health care-specific businesses in unexpected ways when they serve health care customers. Our general business clients (such as IT-related service providers or business consultants) are sometimes surprised to learn that business relationships they are considering raise new HIPAA or other compliance obligations that are an important factor in deciding whether to proceed.

Other laws, such as the E.U. General Data Protection Regulation (GDPR) and California Consumer Privacy Act (CCPA), apply to a broader spectrum of businesses based in part on how and where they operate. State data breach notification laws apply to most types of businesses and may come into play in the data breach context. Businesses should consider the applicability of these and other legal regimes so that they are able to satisfy associated compliance obligations and protect their important relationships.

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