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Regulatory Compliance:

Keeping Up With What Can Shut You Down

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Liability in business arises from three main sources: tort (injury to property or person), contracts and regulation. Tort liability and damages arising from tort can be reduced through planning. This planning process may be known to you as "risk management." Liability from contracts is also somewhat predictable—after all, the point of carefully preparing a written agreement is to embody key terms everyone agrees on. Planning which ensures those terms are carried out can also work to reduce contractual risks.

Regulation is a different animal altogether. Regulation is not something a small business can control or limit for the most part. If your business is the kind regulated by a particular statute, you must comply!

Politically, regulation occurs when one lobbying group convinces a legislative body to protect its members from another group. When two powerful lobbies collide, the legislation is either scrapped or a "compromise" is hammered out. You can see evidence of this process in almost all modern regulatory legislation at every governmental level. The downside to this kind of legislative dispute resolution is that it doesn't always make life easier for the would-be regulated.

A fairly straight-forward instance of such a compromise is the Fair Labor Standards Act—a federal law. Labor is very powerful lobbying group in Washington, and they pressed for passage of this law. Education is another very powerful lobby which didn't want to be subject to the Act. The result—the Fair Labor Standards Act does not require employers of "academic administrative personnel or teachers in elementary or secondary schools" to comply with its minimum wage and overtime provisions.

Fortunately, small business also has a fairly powerful lobbying group. Therefore, many Federal labor regulations also have very helpful carve-outs excluding small business "employers." Good news? Perhaps. The difficulty for small businesses is each such law defines "small business" differently creating much confusion about which laws a given business must comply with and which it is exempt from.

The Civil Rights Act of 1964, for example, does not apply to employers with fewer than 15 employees. The Age Discrimination Act excludes employers with fewer than 20 workers. COBRA applies to employers offering single-employer

health plans with more than 20 workers, while the Family Medical Leave Act only covers business with 50 or more employees in a 75 mile radius. OSHA's primary provisions generally apply to employers with 10 or more workers.

As if that weren't complex enough, the way an employer must calculate who is an "employee" also varies from statute to statute. Some count part-time workers; some use a formula to see how many part-time employees it takes to make one full-time employee, and so on. Additionally, several otherwise labor-friendly laws exclude whole industries from coverage based on their SIC code if your business is lucky enough to work in a given field.

And these examples just describe *federal* laws regarding *labor*. To further compound the problem, businesses are subject to a host of additional regulations enacted on a multitude of subjects by a variety of governmental departments on the federal, state and local levels. All such rules are subject to frequent change and new ones are enacted at almost every session of Congress, the legislature and even the local municipality. What a mess!

While you are waiting for the day some high court finally concludes ignorance of the law *is* an excuse, it may behoove you to learn how your business can deal with these ever-changing rules. The very worst way to "handle" your regulatory obligations is simply to wait until someone notices you are out of compliance.

The truth is compliance with a given law in many instances is simple and inexpensive, and the penalties for non-compliance far outweigh the costs. The trick is figuring out which laws apply to you. Several approaches are available to help you stay in the government's good graces.

One popular method of finding out what you must do to run a compliant business is asking other small business owners what they are doing (assuming, of course, they know). You might also join organizations or associations of like professionals or businesses which provide education about applicable regulations and keep members apprised about new regulations in the works. These organizations may even actively lobby for relief from regulatory requirements or to seek regulations favorable to members. Other ways to get started on your way to regulatory compliance include seeking professional help from lawyers, accountants or specialized regulatory consultants, or just doing it yourself.

If you have the time, patience, perseverance and a reasonably analytical mind, do-it-yourself regulatory compliance may be possible. Do note, however, if you lack any of the above, the compliance process may prove to be a confusing, frustrating and time-consuming experience.

When attempting to comply with regulations today, every small business owner should bless the Internet. I was doing regulatory compliance for a publicly-traded insurance company in the late 1990's before every government department, sub-department and agency set-up sites on the Web. What you had to do to stay compliant depended on the knowledge of the civil servant with whom you were speaking. Some knew what they were talking about and some didn't but thought they did.

Today, the quality and quantity of compliance information available for free on the Internet is astonishing. It represents the official view of the department about what is required of the regulated and is typically reviewed by the department's legal counsel for accuracy. Occasionally, you may have a question that warrants a phone call, but beware of two important things—(1) just like the old

days, the answer you get depends on the knowledge of the person with whom you

are speaking; and (2) the department cannot and will not help you interpret the law or provide what they consider "legal advice."

- For more information on this subject, see these websites:
- ◆ Business.gov—"The Official Business Link to the U.S. Government":
<http://www.business.gov/>
 - ◆ U.S. Department of Labor FirstStep Employment Law Advisor:
<http://www.dol.gov/elaws/FirstStep/index.htm?page=q1>
 - ◆ U.S. Department of Labor Compliance Assistance by Major Law:
<http://www.dol.gov/compliance/laws/>
 - ◆ U.S. Small Business Administration (SBA):
<http://www.sba.gov/smallbusinessplanner/manage/marketandprice/index.html>
 - ◆ Louisiana.gov for Business:
<http://www.louisiana.gov/wps/wcm/connect/Louisiana.gov/Business/Grow+a+Business/>
 - ◆ Louisiana Secretary of State First Stop Shop for New Businesses:
<http://www.sos.louisiana.gov/comm/fss/fss-index.htm>
 - ◆ Louisiana Department of Labor:
<http://www.laworks.net/homepage.asp>
 - ◆ Louisiana Required Labor Posters and Other Labor-Related (Free) Downloads:
http://www.laworks.net/Downloads/Downloads_MainMenu.asp
 - ◆ Louisiana Department of Economic Development (LDED):
<http://www.lded.state.la.us/>
 - ◆ Acadiana Small Business Development Center: <http://sbdc.louisiana.edu/>
 - ◆ Lafayette Economic Development Center (Lafayette Parish only):
<http://www.lafayette.org/site1.php>

Some of the best things regulatory compliance tools you will find on the Web are interactive sites designed to help you decide which laws *may* apply to you based on your answers to a series of questions. These websites mention everything that *might* apply. So like brainstorming, you will likely get some false positive matches. The site may also leave something out. But don't worry. This is just a *starting point* albeit an excellent one.

The next step is one frequently skipped by the uninitiated. Mostly people go straight to "what must one do to comply"; completely bypassing "do *I* really have to comply"? Maybe that's because this step requires a little digging. And don't assume the department knows the answer! If you call the regulating agency to ask if you must comply, the civil servants will almost always assume the answer is "yes."

To find out if you must comply with a given regulation, first review statutes (i.e., the laws) suggested to you as possible matches by the "decision tree" website to see if you fit the definition of "employer," "business," "health care provider" or whatever else the law is supposed to regulate. If the statute doesn't exclude you, go to the regulation and

repeat the process on the off-chance the regulation is more specific than the law.

The regulations and the laws they are derived from can usually be found through links right on the site.

If your business meets the general definition of the regulated entity, next look for express exclusions based on your business' industry; its non-profit, for-profit or tax-exempt status; its religious affiliation; its ownership (51% minority, veteran, etc.); or any other reason. If through these efforts you find that your company must comply, the next step is to find out what you must do to comply. Again the department's website can be an invaluable resource.

For the most part, all information concerning what you are required to do will be right there on the department's site. That's because it is cheaper for the department to put vetted instructions on the Web than to field a bunch of phone calls asking the same questions over and over again.

The hard part is sifting through web page after web page to learn all you must know. Stay alert! If you see a term you don't understand, write it down and be sure you find out what it means before you go much further in your research. Also, check out the FAQ (frequently asked question) pages if you get stuck. They usually contain a gold-mine of knowledge based on situations people run into all of the time.

Before you leave the Internet, it would also be a good idea to Google and Yahoo key search terms you run across in the regulations which describe your business. You never know what else you might find.

Last, repeat the process on the federal, state and municipal level for each aspect of your business—including environmental, labor and employment (including benefits and safety), consumer protection/advertising, business location, tax collection (sales and employee withholding), licensure, physical plant and building code, and anything else you can think of or which may be suggested in your search. Great resources for this final step include economic development websites, local small business development centers, general business-government relations sites and local trade groups and associations. Your public reference librarian may also be of service in helping you define and focus your search.

If through all of this work you find "compliance" is more expensive than you expected, don't bury your head in the sand and forget all about it! Hire a professional to make his own determination about what you are required to do. He may be able to find an alternative means of satisfying your legal obligation to the government that is more cost effective for your business than the one you were able to discover on your own.

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