

A Legal Guide to Starting Your Own Business in Illinois



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AMC Legal, P.C.

AMC Legal is a solo practitioner law firm run by attorney Allison M. Cychosz and located in Burr Ridge, Illinois. AMC Legal can help any Illinois business with the complexities of incorporating a new business. I can explain what you need to know in terms that you can understand. This is not just an internet business but a real law firm with real experience to help businesses such as yours. AMC Legal can help you start your business, provide resources for you to get it up and running, advise you as your business grows and keep your business up to date with all legal matters.



AMC Legal does all the legal legwork for you so you can focus on building your business. Most prices include all attorney fees as well as filing fees. In addition, when you place an order for a service from AMC Legal, you will have a one on one legal consultation with an experienced attorney who can advise you regarding your business. You can feel free to ask any questions you have regarding your incorporation, contracts, trademark application or other services throughout the process.

Please visit AMC Legal's website at www.amclegal.net for more information, contact information and pricing.

Introduction



Making the decision to start your own business is a huge first step. This first big leap will be followed by countless more decisions that can be absolutely overwhelming even for the most business savvy individual. This Guide is intended to provide you with essential information to educate yourself and guide you along the way. Running your own business can be a very rewarding adventure, especially if you're able to make educated decisions. It is imperative to the success of your new business that you

make the right decisions when initially starting up. Often times, making a wrong key decision when starting up can ruin a business down the line since the implications may not become apparent until years later. But don't let this discourage you. Just be sure to educate yourself when faced with making a decision you may be unsure of. The best business owners take a moment to consult with an expert such as a lawyer before making a final decision. There are affordable services out there for smaller businesses without a large budget and you should be sure to take advantage of them. This reasonable up-front cost can wind up saving you immeasurable time and money later on.

Choosing a Business That's Right for You

Your Passion

It is important to choose a business that you have a genuine interest in doing. Starting up your own business will take a lot of hard work and dedication. Many new businesses fail because the sole owner is burned out quickly with all the effort and time put into the new venture. However, having a true passion for the business will keep you encouraged, keep you motivated and help you last through the first few years of the business.

Get Some Experience If You Can

If you are starting up a new business that you have not personally worked in previously it is a good idea to get some experience before starting up on your own. You can do this by working for a competitor for a period of time, taking classes that may be offered in the service or product that you will be offering or consulting with those in the field. It is better to get a good solid understanding of the area of business you will be going into. This will give you an amazing head start when you finally go out on your own. It will save you from making mistakes that could set you back and also give you a leg up on the competition that you would not have had otherwise.



Doing Your Homework

You should take a step back and look at your business from the view of the customer. Why would they choose you over your competitors? Do you provide a better service? Do you provide a better price? Do you fill a gap that your competitors are not filling?

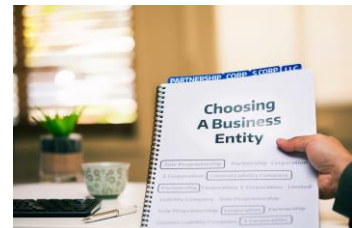
Licenses and Permits

Just about every type of business will need some sort of business permit or license. You may need a local license, perhaps a county permit or even a professional license. These requirements are based on what type of business you will be running as well as each village and county's requirements. It is best to look into this prior to starting your business. Professional licenses may require a few weeks to process before you can begin your business. Other types of businesses, such as a restaurant, will require special training. A bar will require a liquor license which may require certain training or zoning. The Illinois Department of Professional Liability is a good place to start. Again, each business type has its own requirements, a home health care service organization will need to register with the Illinois Department of Public Health, an animal shelter may need to register with the Agricultural Department. This is not an area where you want to be caught off guard. Know what is required ahead of time and what is needed to be approved and how much it will cost!

Deciding What Type of Business to Form

Sole Proprietorship

A Sole Proprietorship is the easiest business to form. You may need to just file with the county and you're ready to go. All of the income goes on your personal tax return and there's no extra paperwork. However, there's no liability protection or tax advantage to this type of set up. All of your personal assets are at risk if there is ever an issue with liability. Any money you borrow for the



business you are also personally liable for. Even though this is the easiest form of business, it is not the most advantageous for the owner. From a liability standpoint this is not a recommended form of business.

General Partnership

A General Partnership is similar to a Sole Proprietorship however there are two or more owners of the business. All partners may be jointly and severally liable for all business liabilities. What this means is that each individual is not only responsible for their own actions but also that of their partners as well. This type of business structure is fraught with liability for each partner. All personal assets are still at risk but now you are not only responsible for your own actions but also that of your partners. Any money the business borrows may leave you responsible for the full amount even if your partners don't put up their share of the loans. Again, from a liability standpoint this is not a recommended form of business.



Limited Partnership

In a Limited Partnership there are a general partner and one or more limited partners. The general partner is still personally liable for all business debts and liabilities, but the limited partners have no personal liabilities. However, the limited partners are not allowed a say in the management of the business. Only the general partner, who retains all liabilities, can say how the business will be managed. The advantage is that only one person has personal liabilities. The disadvantage is that there is still personal liability for the general partner and the limited partners have no say in how the business is run. Again, from a liability standpoint this is not a recommended form of business.

Limited Liability Partnership

In a Limited Liability Partnership the liability of the partners is no longer jointly and severally liable as with a General Partnership. However, each partner is still personally liable for his or her own actions and for the debts of the partnership. The advantage is you are not responsible for others' liabilities, but you are still open to personal liability. Again, from a liability standpoint this is not a recommended form of business.

C Corporation

A Corporation offers liability protection for all Shareholders. But keep in mind that there are other legal roles in a Corporation such as the Board of Directors and the Officers. Even if it is the same person filling the role of Shareholder, Director and Officer, the law will view it as three separate roles. The Directors and Officers may still be open to personal liability. However, there are ways to strengthen the liability protection for each role. Please see below for more information. In general, a C Corporation structure is not an attractive option due to the fact that the C Corp will have double taxation. The Corporation is taxed at the corporate level and the Shareholders will be taxed again at the personal income tax level.

S Corporation



The S Corporation offers essentially the same liability protection as a C Corporation. The main difference is in the taxation. Generally, the S Corp has the potential for saving a good deal on income taxes (approximately 7.65%); however, there is a trade off in that there may be more paperwork and tax filings required. Since each company's and individual's taxes are a unique situation you should discuss this with an attorney, accountant or CPA who is familiar with business taxation.

Limited Liability Company

An LLC offers liability protection for the Members (owners) similarly to that offered in a corporation. However, it is a different legal creature. It does not necessarily offer any tax advantages. An LLC with one owner will be taxed similarly as a sole proprietorship and an LLC with two or more owners will be taxed as a partnership. There may be less tax paperwork required, but again, this is dependent on the particular situation.

Generally, an LLC is a good idea if there is an owner who is not a US Citizen or permanent resident (a requirement of an S Corp) or if there is property ownership or passive income (income from rentals or investments). The LLC does offer the flexibility of being able to be taxed as an S Corporation. The best choice is to discuss all the options and the pros and cons with an experienced attorney. An accountant can advise on the tax implication, but not on the legal aspects of a business. So consulting with an attorney is the best path to take.



Not For Profit

A Non-Profit is a legal creature different from those listed above. A Non-Profit can be created in different versions. One version is a venture that is not necessarily charitable in nature but truly is created with no intent for profit such as a social group. The second version, and more common, is created either for charitable, educational, scientific, religious or other benevolent reasons. Non-Profits will be discussed in more detail later on.

Benefits of Incorporating

Personal Liability Protection



The first and foremost advantage of incorporation is to protect the owner(s) from personal liability. When you are a sole proprietor or partnership you are liable for the business' debts including if you are sued. This means creditors can go after your home, your car or your personal investments to satisfy any judgments against your or any debts the business has. With a corporation or LLC, the business is the one who remains liable for all debts including lawsuit awards (unless a personal guaranty is given). The owners only stand to lose the amount that is invested in the company and nothing more. Of course, there are exceptions such as a fraudulently undercapitalized corporation or personal liability for egregious or criminal conduct. However, in most circumstances your personal assets will be protected. If you are also listed as a director or officer, you will need an Indemnification Agreement to further protect you from personal liability. It is still advisable to obtain business liability insurance to protect your business and its assets.

Tax Advantages

Corporations and LLCs may be able to deduct more expenses than sole proprietors or partnerships. Corporations can offer stock option plans, retirement accounts and health benefits which may all be tax deductible expenses which can lower the overall taxable income of the corporation or LLC. You may even be able to cut down on the amount of income taxes you pay as a sole proprietor or partnership since you can pay yourself as an employee of the corporation or LLC. You should speak to a tax professional regarding the tax aspects of forming a Corporation or LLC.

Name Protection

If you incorporate in Illinois, your company name is protected to a certain extent. No other corporation, Non-Profit or LLC in Illinois can incorporate with your business name. When you are a sole proprietor or partnership, the company name is only registered with the county and other corporations or LLCs can still incorporate with your business name. You can even protect the business name further after incorporation by filing a federal trademark. AMC Legal can perform a trademark search and file the application for your business.



Perpetual Existence

Another benefit of incorporating is that since the Corporation or LLC is considered a separate legal entity from its owners, it will continue on perpetually, even if the owners die. The shares can be quickly distributed to family members without interrupting the flow of the business.

Credibility

It simply looks better to customers when they know you are incorporated. It provides confidence and shows longevity in your company.

Anonymity

The Shareholders of a Corporation are not listed on the articles or on the secretary of state website. Therefore, it is easier to keep the ownership of the company anonymous. The directors/managers or officers may be listed, but not the owners.

Easier to Obtain a Loan

Many financial institutions make it easier to obtain a loan if you are incorporated and can show a profit. Often times, sole proprietorships or partnerships are forced to incorporate after being in business for many years in order to obtain a loan. It would be much easier to start off incorporated and establish an incorporation date right from the start, even if you don't know if you'll want or need a loan later on down the line. Regardless of the credit rating of individuals, corporations have their own credit rating. Incorporating early and building up a good credit score for the corporation can help if you cannot obtain a future loan.

Easier to Sell

Since the corporation is a separate legal entity from the owners and has perpetual existence, it is easier to sell. A sole proprietorship or partnership is tied to the individual owners and makes it more difficult to value and transfer. With a corporation or LLC, it is easier to transfer ownership by selling your stock or membership interests to third parties. The company's business will continue on under new ownership.

Easier to Attract Investors

It is easier to attract investors when you are able to issue stock in return for their cash contributions. Keep in mind though, you may run into securities regulations.

Disadvantages of Incorporating

More Paperwork

There is more paperwork involved in setting up and maintaining a Corporation or an LLC. Most of the paperwork is up front during the initial startup. During the year there are resolutions, annual minutes and accounting work that needs to be done. However, that is a minimal tradeoff for the advantages of liability protection and potential tax advantages. And remember that AMC Legal is here to help keep you up to date. It's completely manageable.

Up Front Cost

It does take some additional planning and cost to set up a Corporation or LLC rather than a sole proprietorship, however, AMC Legal offers these services at very reasonable fees. Just check out our packages for Corporations, LLCs and Non-Profits and you'll see.

Do I Need a Lawyer?

Start Out Right. Of course you can start your corporation by yourself, however, an attorney can provide you with the legal advice you need to make sure you are starting off on the right foot. Simple mistakes in incorporating can lead to major consequences later on. There are many different types of entities to choose from in Illinois and a lawyer can help you decide which is best for your particular situation. There are many filings after incorporation that you may not be aware of. There are also many tax consequences that a lawyer and a CPA can advise you on.



Do Not Use A CPA/Accountant for Incorporating. A CPA is a good source of information regarding the tax aspects of incorporating. However, a CPA cannot advise you regarding the legal aspects of incorporation. It is the unauthorized practice of law for anyone other than a licensed lawyer to advise you about the legal consequences of forming a Corporation or LLC. These laws were put in place to protect the public from having their incorporation done incorrectly by those without firsthand knowledge of the law.

Don't Make the Same Mistakes As Others. It has happened time and time again. Many people incorporate on their own only to find out on their first tax return, or years later, that they did not choose the most advantageous entity type. Once you've filed your corporate papers it's more difficult to make changes later on. Incorporating on your own may save you some fees up front but may wind up costing you even more money down the road. A majority of business owners filing on their own make mistake that cost more for an attorney to correct than if an attorney had been involved from the beginning. Licensing is missed, paperwork is filed incorrectly or simply skipped altogether.

Protect Yourself From Liability. There are many legal aspects to incorporating that must be considered. Simply filing articles with the state is NOT enough to protect you from personal liability. There are many formalities and corporate documents that must be created in order to start a new corporation. Consulting with an attorney at AMC Legal will provide peace of mind and set you up on a strong business foundation. There are also other ways to protect yourself from personal liability that only a lawyer can advise you on.



Keep in mind that the costs and consequences of making a mistake with your incorporation can wind up being much more costly than if you hired an experienced lawyer to do it right in the first place.

Paperwork Required to Incorporate a C Corp or S Corp

Articles



The Articles of Incorporation (or Organization for an LLC) are simply the forms that are filed with the Secretary of State. I must stress very strongly that filing these Articles with the state DOES NOT give you any liability protection or tax advantages. These simply register you with the state and nothing else. The liability protection stems from the other internal paperwork such as the minutes, bylaws, stock certificates, board resolutions etc. The tax advantages come from the tax filings with the IRS and good tax planning. This is why you need a lawyer and an accountant to assist you in setting up the corporation or LLC. You do not want to miss steps in setting up or maintaining the business, this can cost you in big ways later on.

EIN (FEIN) Employer Identification Number, Federal Tax ID

This is essentially the social security number for the business. A corporation or LLC is looked at as its own legal individual and needs its own tax ID. Please do not be confused by its name, it is necessary for every business regardless if you have employees or not. It is necessary for all tax filings and opening a bank account.

S Corp Filing

Every S Corporation starts out as a C Corporation. It becomes an S Corporation after filing the appropriate paperwork with the IRS. An S Corp election can be made if the company meets certain qualifications. In general, the status is granted if there are 100 or less shareholders, all shareholders are either US Citizens or permanent residents, all agree unanimously to be taxed as an S Corporation and there is no more than 25% passive income (income from rents or investments).

Corporate Book

The items in the corporate book are absolutely necessary for any corporation as well as an LLC. These are the documents that lend to the liability protection, the utmost reason to incorporating in the first place.

Bylaws

These are the rules by which a corporation is run. This applies only to a C Corp or an S Corp; the documents are different for an LLC. The bylaws set up when to hold the shareholder meeting, directors meetings, the powers of the board of directors, the powers of each officer, what to do in the case of a vacancy in one position, financial matters, and other very important matters when running a corporation. Even if there is only one person serving as Shareholder, Director and Officer (which is perfectly acceptable) the law looks at each role separately and each role has separate rules.

Organizational Minutes

These documents set up the elections of the Board of Directors and Officers, list the shareholders, set up for stock certificates and other essential start up tasks.

Stock Certificates

These certificates list the name and number of stock of each shareholder and also include wording legally required for shareholder agreements or S elections.

Indemnification Agreement

This is a strongly recommended agreement that every single business needs and here's why. When you incorporate, you are protected from personal liability (provided you follow all corporate formalities) as the owner of the company. Shareholders are protected from liability by statute but directors and officers are not. With the indemnification agreement if a director or officer is found liable for a decision made in the regular course of business, the corporation will pay for any court costs and judgments the officer or director incurs in defending a lawsuit or action.

Shareholder Agreement

You should not start a business with a partner unless you have a Shareholder's Agreement! I cannot stress this enough. It happens time and time again. You start a business with your best friend, who you've known your whole life. You think you would never argue or disagree or pull one over on each other. But it does happen, even to the best of friends. Starting a business can put stress on even the best of relationships. Start out right with a Shareholder's Agreement. Even if you do get along and never argue, there are provisions in the Agreement that every Shareholder can benefit from. The Agreement will set forth how to deal with many situations that may arise in running a business. Here is a list of some of the many issues resolved in the Agreement.



- What if a Shareholder wants to sell his stock?
- What happens to the stock when a Shareholder dies?
- What happens in one Shareholder stops participating in the business?
- When will dividends be distributed?
- What happens to intellectual property created by a Shareholder for the business?
- What if a Shareholder leaves to compete with the company?
- What if my partner wants to add more Shareholders but I don't?
- What if I want to close the business?

Corporation Employees

If you are the owner of a Sub S Corporation and you are performing services on behalf of the company the IRS will expect the corporation to pay you a reasonable salary. Even if you are the owner, you will need to pay yourself as an employee and file all necessary paperwork.

Business Registration

You will need to file a business registration in two instances: if you have employees or if you need a sales tax (or reseller's) number.

Unemployment Report

This will determine whether you have to pay into the unemployment system. If you do, you may be eligible for unemployment if your business is not doing well.

New Hire Reporting Form

This reports basic information for the state to track who is working in Illinois.

Roles in a Corporation

Shareholders are the owners of the corporation. Shareholders invest money in the company (capital contribution) and they receive shares and elect the directors.

The Directors (board of directors) make most major decisions for the operation of the business and they elect the officers of the corporation.

The officers typically consist of the President, Secretary and Treasurer. A Vice President is optional. The President manages the business. The Vice President aids the President and fills in if the President is incapacitated. The Secretary manages the corporate records. The Treasurer controls the financial records or hires an accountant/bookkeeper. These positions are more fully laid out in the by-laws.



Paperwork Required to Organize an LLC

Articles of Organization

The Articles of Organization are simply the forms that are filed with the Secretary of State. I must stress very strongly that filing these Articles with the state DOES NOT give you any liability protection or tax advantages. These simply register you with the state and nothing else. The liability protection stems from the other internal paperwork such as the minutes, bylaws, stock certificates, board resolutions etc. The tax advantages come from the tax filings with the IRS and good tax planning. This is why you need a lawyer and an accountant to assist you in setting up the corporation or LLC. You do not want to miss steps in setting up or maintaining the business, this can cost you in big ways later on.

EIN (FEIN) Employer Identification Number, Federal Tax ID

This is essentially the social security number for the business. A corporation or LLC is looked at as its own legal individual and needs its own tax ID. Please do not be confused by its name, it

is necessary for every business regardless if you have employees or not. It is necessary for all tax filings and opening a bank account.

Indemnification Agreement

This is a strongly recommended agreement that every single business needs and here's why. When you organize, you are protected from personal liability (provided you follow all formalities) as the owner of the company. Members are protected from liability by statute but managers and officers are not. With the indemnification agreement if a manager or officer is found liable for a decision made in the regular course of business, the LLC will pay for any court costs and judgments the officer or manager incurs in defending a lawsuit or action.

Operating Agreement

Single Member - Single Member LLCs are treated differently than Multi Members LLCs both in



their tax treatment and possibly in liability treatment. LLCs are generally new in the grand scheme of things. They have not been around long enough to have all issues fully litigated in Illinois. In some other states, single member LLC owners have been viewed as if they are really self-employed due to the handling of corporate matters by the owner. In those situations, the LLC entity had been completely disregarded by that state for both tax and liability issues. That is why it is extremely important to have an operating agreement for this type of

entity. It is important to set up how the LLC will be run and to establish from the very beginning that the LLC is truly a separate entity from its single owner. You can do this with a Single Member Operating Agreement. Without a well written Operating Agreement you could be at risk for personal liability.

Multi Member - It cannot be stressed enough how important it is to have an Operating Agreement. You simply should not start a business with a partner without one. It happens time and time again. You start a business with your best friend, who you've known your whole life. You think you would never argue or disagree or pull one over on each other. But it does happen, even to the best of friends. Starting a business can put stress on even the best of relationships. Start out right with an Operating Agreement. Even if you do get along and never argue, there are provisions in the Agreement that every Member can benefit from. The Agreement will set forth how to deal with many situations that may arise in running a business. Here is a list of some of the many issues resolved in the Agreement.

- What if a Member wants out of the Company?
- What happens to the membership interests when a Member dies?
- What happens in one Member stops participating in the business?
- How will profits be distributed?
- What happens to intellectual property created by a Member for the business?
- What if a Member leaves to compete with the company?
- What if my partner wants to add more Members but I don't?
- What if I want to close the business?

Series LLC Operating Agreement

This agreement is crucial to setting up a Series LLC. This document sets up how a Series LLC is run. Filing the papers with the state is simply a formality, and does not establish how the Series LLC will operate. This agreement will establish how a Series Designation (subsidiary) will be created and run.

Series LLC Subsidiary Operating Agreement

This agreement is crucial to setting up a Series Designation. Each Designation has its own set up and can have different Members, Managers and Officers and its own Operating Regulations. Therefore, each Designation will need its own Operating Agreement.

Business Registration

You will need to file a business registration in two instances: if you have employees or if you need a sales tax (or reseller's) number.

Roles in an LLC

The Members are the owners of the LLC. They invest money (capital contribution) and they elect the Managers. An LLC can be either Member Managed or Manager Managed. The Members can run the company themselves or hire separate managers to do it for them. AMC Legal typically chooses to list the LLC as Manager Managed even if the Members are in fact the Managers for a couple of reasons. 1) The Member's name will remain anonymous in the articles of organization and 2) You can decide who will be Manager and Vice Manager if you have more than one Member.

The Managers are similar to a board of directors in that the Manager runs the business and the vice manager aids the Manager and takes over if the Manager is incapacitated. The Manager refers to the members for major decisions.

The Officers are the Secretary and Treasurer. The Secretary manages the corporate records. The Treasurer controls the financial records or hires an accountant/bookkeeper. These positions are more fully laid out in the operating agreement.

Non-Profits



The first step is to create a Non-Profit Corporation in Illinois. Once that is approved, then we can move on to the 501c3 Application with the IRS. The 501c3 status allows a Non-Profit to be exempt from income taxes both federal and Illinois. It also allows those who donate to the organization to deduct those donations on their own tax returns. It even allows an organization to apply for grants and other sources of money for the organization.

It is important to file the 501c3 application as soon as possible after incorporation. If filed within 27 months of incorporation, the 501c3 approval can be effective from the date of incorporation.

It is important, as with all types of business forms, to enlist the help of an attorney in the process of setting up a Non-Profit in the very beginning. There are certain ways the Articles need to be worded to allow for a 501c3 request. There are many documents required for a 501c3 application before it can be submitted. Minutes, bylaws, resolutions, a conflict policy and other documents must be created before you can even submit the original application. Final approval is somewhat subjective to each individual examiner of the application and an attorney can not only try to eliminate red flags to an IRS examiner but also work with the examiner to meet his or her requirements for the organization to obtain the approval. 501c3 approval can take anywhere from 6 to 18 months generally. Having an attorney can shorten that process considerably.

Paperwork Required for a Non-Profit

Articles

This is the document filed with the secretary of state to create the nonprofit. If the organization wishes to apply for 501c3 status, then there is specific wording which must be included in the articles. If it is not included the IRS will require that you amend the articles prior to approval.

Bylaws

This document sets up the purpose of the organization, how the organization will operate and the rules by which it must operate. If the organization is filing for 501c3 status a copy of these must accompany the organization. It is best to review these with an attorney with that intent in mind prior to filing to make sure they comply.

EIN (FEIN) Employer Identification Number, Federal Tax ID

This is essentially the social security number for the business. Please do not be confused by its name, it is necessary for every business regardless if you have employees or not. It is necessary for all tax filings and opening a bank account.

Bylaws

These are the rules by which a nonprofit corporation is run. The bylaws set up the purpose of the nonprofit when to hold the directors' meetings, the powers of the board of directors, the powers of each officer, what to do in the case of a vacancy in one position, financial matters, and other very important matters when running a corporation.



Organizational Minutes

These documents set up the elections of the Board of Directors and Officers, list the members (if any) and set up other essential start up tasks.

Charitable Organization Registration Statement

If you will be collecting donations or holding fundraisers in the state, then you will most likely need to register with the Attorney General's office. The Illinois Attorney General's office has the task of policing the charities in the state and ensuring that they are compliant with state requirements and are not scamming Illinois citizens.

Illinois E Number

This is a tax-exempt number for your nonprofit organization which will allow you to purchase goods for your NFP without having to pay sales tax in Illinois. This is available once your organization has 1 year of records to show the state.

Roles in a Non-Profit Corporation

You can set up a non-profit two ways, either with or without members. With members, 1 or more members elect the board of directors. Without members, the board of directors elects its own members with staggered elections. Having a member(s) allows one or more people to retain control over who is on the board of directors. The member(s) may or may not serve on the board of directors at their own discretion. With a self-voting board of directors, the terms are staggered, for instance 2 members elected in years 1 and 3 and other members elected in years 2 and 4 and so on so that there is not a complete turn over in board directors at any one election. 3 directors are required to start a nonprofit. If any of the members are related it should be discussed with an attorney, this could cause an issue in obtaining a 501c3 status.

Independent Contractors and Employee**IC vs. Employee**

There can be a very tricky delineation between whether an individual or corporation can be classified as an employee or an independent contractor. The IRS has a test for this determination but the State of Illinois has a separate test in which they consider 25 different factors. Please look under other articles on AMC Legal's website for a full discussion on this matter at www.amclegal.net.



Extreme care must be exercised when using Independent Contractors (ICs). The IRS and the state of Illinois are cracking down on the use of ICs. Illinois enacted new laws recently to enforce this even more. Their motivation? Taxes of course. If your ICs truly are independent then it is the IC's responsibility for paying employment taxes, not yours. However, they must truly be independent to be considered ICs. There are several factors the federal and state government uses to determine independence. Three of which

are: is the IC incorporated on its own, is there an IC Agreement and do you exercise control (other than general direction) over the IC? If your IC is already a separately incorporated business, then that is taken care of. Otherwise, you can recommend, or even require, that they be incorporated. Secondly, you need an Independent Contractor's Agreement to legally set forth the relationship as being truly independent. Other businesses who have dealt with ICs incorrectly have been required to pay back employment taxes for the entire time they've used the IC plus interest and penalties. Don't let this happen to you.

Employment Agreement

An Employment Agreement is an essential way to give you security as an employer and to manage the expectations of the employee. As with anything, get it in writing! An employment agreement can address many situations such as: scope of work, commission, salary or hourly terms, vacation, over time, sick time, non-competition, employment at will or for cause

termination and confidentiality. Every employer, no matter how big or how small, needs some type of agreement.

Accounting

Software

There are a few different versions of accounting software available for small businesses. It is a good idea to start the accounting right off the bat when you start a new business. The longer you let it go the more work it becomes. Many of these products claim that you don't need to be an accountant to use them, but realistically you will most likely need some training and help to get it set up right.



Accountant/CPA

A good accountant or CPA is essential to running a business and is not something you should delay. Many filings for a business start within 30 days of incorporating. Even if these items are filed, you should start some tax planning before taking money out of the business to make sure you are doing it in the most tax advantageous manner. A tax advisor can often help you out with setting up your accounting software and providing training so that you can keep up with your accounting. Even a simple service business needs to maintain accounting properly and even a small retail business needs to account for inventory properly.

Where to Work?

Work From Home Option

With the advent of the internet and online stores many entrepreneurs have the option of working from home and not having to do a brick-and-mortar store front. It is still a good idea to get a business address separate from your home address to keep the home address away from the public eye, not only for privacy but also for safety reasons.

Virtual Office

The virtual office is a good option for those who are actually working from home but need a separate mailing address as well as a place to meet clients. Depending on the company offering the service you may be able to have access to a conference room or meeting area for a small fee or even included in your service package. Most virtual office services offer an array of services based upon your needs including faxing, answering service, conference rooms and mailing address.

Office Sharing

Another office which is available, especially for business professionals is to share office space with others in a similar field. Often times you can find listings in field specific classifieds for an open office space with shared secretaries and common areas making a real office much more affordable.

Meet at Client

If you are a business professional the common use of internet, video and telephone conferencing and email often make working from home much more manageable. Often times if you do need to meet you can find an office space to share from another professional in your

field or a virtual office conference room. Another option is to go to the client. This may be more convenient for your client, you save money on finding office space and you may be able to deduct the mileage and tolls from your business expenses.

Taxes



The information provided here is very general in nature and you should seek the advice of a tax professional for specific information.

The two biggest considerations in choosing your company's legal form are liability protection and tax classification. The C Corporation is generally the worst for taxation in that there is a double tax since the corporation itself pays income taxes and the shareholders will pay personal taxes again on any money they take out of the business, in essence the same money is being taxed twice.

Both the S Corporation and the LLC are flow through entities. This means that the money flows through the S Corp and LLC to the owners and is reported on their personal tax returns. The S Corp and LLC do not themselves pay taxes, but the owners do. Please note, and remember, that though there is no direct tax on the S Corp or LLC, they still need to file a tax return typically due on March 15th, though this can vary on unique circumstances and accounting periods.

A Non-Profit is not necessarily exempt from federal or state income tax unless it has applied for and received a 501c3 designation. If you are a 501c3 organization with a gross receipt of \$50,000 or less you can simply electronically submit an e-Postcard to the IRS prior to May 15th following the tax year. (as of March 2022).

Insurance

As discussed throughout this Guide, incorporating or organizing your company is a good step toward personal liability protection. However, that will not be enough to ensure the strongest protection possible. After incorporating (or organizing) the company will still need to be sure to treat the company as separate from the individual(s) running it by doing separate accounting as well as keep up with the company minutes and resolutions.



Another great step towards liability insurance is obtaining insurance. One type of insurance that is highly recommended to protect the directors/managers and officers is general liability insurance. The state laws protect the owners of the company for a corporation or LLC but does not protect the directors/managers or officers from personal liability. Even if you are the same person filling all three roles, the law looks at each differently. Therefore, if for some reason the corporate veil is pierced and the owners are found personally liable, or should the director or officer be liable personally, the insurance should be able to cover that judgment without having to touch your personal assets.

There are many other types of insurance policies to cover the specific type of business you are doing. For instance you may need to look into errors and omissions insurance, professional liability insurance or medical malpractice insurance. Again, being incorporated or organized may not cover these situations.

Also, if you are working out of your home, you may want to include an in home business policy to your home insurance policy or renter's insurance policy. Your inventory, business machines, computer, server, printer etc. may not be covered otherwise.

Conclusion

It can seem very overwhelming to start up your own business, but it can be done easily with the help of a few professionals and some good business planning. There are many affordable services out there if you look around. You may be tempted to go at it alone, but as you can see there is a lot more involved than filing with the state and opening up the doors. Don't let this discourage you though, once you get up and running everything will find a rhythm and a flow and become second nature. Everything new has a learning curve and starting a business is no exception. Let AMC Legal and an accountant, and even an insurance provider, advise you about your business so you can focus on building your business to be the best it can be.

Contact Attorney Allison Cychosz

AMC Legal, P.C.

7420 S. County Line Rd., Burr Ridge, IL 60527

(630) 590-3640



 <h2>Legal Services</h2> <h3>Business</h3>	<h3>Trademarks</h3>	<h3>Estate Planning</h3>
<ul style="list-style-type: none"> Incorporating S Corp, LLC, Non-Profit Contracts Leases Buying/Selling Out of State Filings Stock Offerings 	<ul style="list-style-type: none"> Full Comprehensive Trademark Searches Trademark Filings Cease & Desists Trademark Renewals 	<ul style="list-style-type: none"> Wills, Trusts Powers of Attorney Living Wills Estate Plan Reviews AB Trusts Deed Transfers Estate Administration