

BUSINESS LAW NOTES

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EMPLOYMENT MISTAKES EMPLOYERS SHOULD AVOID

F. Stephen Glass

"It can't happen here," most employers think. Think again.

Sometimes employment disputes that seem petty to the employer and are dismissed as such become larger than life when portrayed in a court room. Even where a manager or employer had good intentions, those intentions can cross over the line into the minefield of the court room if care is not taken in the proper management of work-place situations. The following are some common mistakes employers should avoid.

1. **Poor Policy Management.** An out-of-date policy or one that is not consistently applied may be worse than not having a policy. EEOC areas are potential mine fields for employers with poor policy management.
2. **Poor Training and Resources for Managers.** Good policies and procedures are only as good as managers and supervisors apply them with employees. Train managers to properly administer the company policies and give them the resources to carry out those policies and procedures.
3. **Inadequate Documentation.** Failure to document employee issues leads to the frustration disciplinary actions. If it isn't documented, it didn't happen! Document, document, document!!
4. **Failure to Listen.** You won't know that you have a problem unless you are listening to issues raised by employees. Listen, learn then act!
5. **Failure to Communicate.** Perhaps the most basic problem in most problematic situations is the failure to communicate with clarity so that everyone will understand exactly what you intended to say. Write or say it in the language your employees can understand (and not misunderstand).

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BUSINESS LAW NOTES

EXITING A TROUBLED FRANCHISE

By M. Blen Gee, Jr.

A franchisee may find that the franchise business he has poured so much effort into is not the success that he had hoped. Many franchisors poorly manage their systems and some abuse their franchisees. For many reasons, the franchisee may make the decision to exit the franchise system.

If the franchisor is strong and your franchise business is profitable, selling your franchise within the system should not be too difficult. If the franchisor is poorly run and in decline, selling your franchise business within the franchise system may be difficult. The franchise agreement may be structured so that you cannot sell the franchised business outside of the system. Worse still, you may be behind in royalties and advertising payments, have personally guaranteed the franchise agreement. Here are some key suggestions as to how do you exit the system and salvage some of the value of your business:

- Find a good franchise lawyer to assist you.
- Review your franchise agreement carefully with your attorney. The typical franchise agreement is heavily slanted toward the franchisor. However, there may be favorable provisions in the agreement or a loophole that you can squeeze through.
- Develop a joint business and legal strategy. While it may be difficult to sell the franchise within the system, an established location with a regular clientele may have value. Your customer list may have value. Know what your business options are and what limitations the franchisor imposes on you.
- If you are substantially behind on the payment of royalties, you may be able to use this to your advantage if you can leverage an affordable pay-out upon your exit.
- The franchisor may have breached the agreement. There may be other abuses by the franchisor such as anti-trust violations, breach of the implied covenant of good faith and fair dealing, outright fraud or constructive fraud. Review all of the franchisor's "bad acts" with your attorney. If there is a valid factual basis for one or more claims against the franchisor, this can give you substantial leverage. Even though many franchisors litigate aggressively, generally speaking, franchisors prefer to avoid litigation. Litigation must be reported in the Uniform Franchise Offering Circular (UFOC).
- Contact other franchisees who have left the system or are contemplating leaving to find out what position the franchisor is taking on various issues. Do not be surprised if franchisees have been required to sign a confidentiality agreement as part of their termination package.
- Confer with your attorney as to when and how to notify the franchisor that you intend to leave the system. Strictly comply with all notice requirements of your franchise agreement.
- Litigate as a last resort. Litigation is expensive and inherently unpredictable. The franchise agreement will be heavily favorable to the franchisor in the event of litigation (or arbitration). If litigation is likely, discuss the costs with your attorney and manage your cash flow so that you have an adequate litigation fund. All too



**Develop a
joint business
and
legal strategy.**

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SMALL BUSINESS TAX LAW QUIZ

By F. Stephen Glass

Did you know that:

- The standard mileage rate for operating your car, van, pickup or panel truck increased in 2004 from 36 cents to 37.5 cents for all business miles?
- The business standard mileage rate that may be used for as many as four vehicles that the business owns or leases and use simultaneously?
- The maximum net self-employment earnings subject to the Social Security part of the self-employment tax increased in 2004 from \$87,000 to \$87,900?
- The self-employed health insurance deduction percentage has increased to 100 percent?
- The maximum § 179 deduction you can elect for property purchased and placed in service has increased from \$24,000 to \$100,000?
- The types of property that qualify for the § 179 deduction have been expanded to include off-the-shelf computer software?

MEETINGS OF CORPORATE

DIRECTORS

BY F. Stephen Glass

N.C. corporate law provides the rules for annual meetings and special meetings of the shareholders of business corporations. The Board of Directors, which may consist of one or more directors, elects officers and determines the general business direction and policies of the business corporation. Directors may also act by unanimous written consent in lieu of meeting. Board meetings may also be conducted by telephone conference. North Carolina has statutes requiring notice of shareholder and director meetings, and governing the conduct of such meetings, which are similar to those of most states. Corporations should take director's meetings seriously — and properly document actions taken.

IF THE DEAL SEEMS TO GOOD TO BE TRUE, IT PROBABLY IS!

By Jean Winborne Boyles

We are all eager to make more money, but when the deal seems to be too good to be true, it usually is. You may be approached in a social rather than a business manner. The motto is "Do Your Due Diligence." Do not be afraid to ask what may seem to be an invasive question. "I should have known better" or "I wish I had looked at this as a business deal rather than just an opportunity with a friend" are sad laments.

There are many legal ramifications to business deals. One is to approach it as a business deal and not as a social engagement. Ask questions. Do not write checks without a thorough knowledge about the investment. Two sources of information are the Secretary of State and the Better Business Bureau. Ask for references, talk to other people who have invested. If you are the first one, beware. In short, be careful with business investment opportunities. The opportunity may be for the one you are giving the money to, not for you.

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Marcus Brown, son of our receptionist, Edna Brown, was recently named to the 2004.2005 National Honor Roll, a distinction based on merit and achievement.

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M. Blen Gee, Jr., is an honors graduate of the University of North Carolina School of Law. His areas of concentration include business and corporate law, including sales of businesses; business litigation, including arbitration and mediation; franchise law; automobile dealer law; and insurance company insolvency.

F. Stephen Glass is the author of *The Legal Handbook for North Carolina Businesses; Your Estate Planning and Administration Handbook; Limited Liability Companies Update 2004 (Formation and Operation; State LLC Law Issues; LLC Tax Issues; LLC Securities Law Issues; Special Uses of LLCs); Contract Preparation: Drafting Complete and Unambiguous Contracts; North Carolina Family Limited Partnership Update*. His practice is concentrated in the areas of business, employment and corporate law, business succession planning and estate planning. He serves on the Cary board of Capital Bank.

Jean Winborne Boyles, concentrates her practice in health law, corporate law, bankruptcy and creditors' rights, commercial leasing, antitrust and state administrative law.

“TOP TEN” EMPLOYMENT MISTAKES.

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- 6. **Failure to Follow Through On Promises.** Losing the trust of employees quickly turns to distrust. A sure way to reduce employee productivity is to increase distrust.
- 7. **Improper Handling of Disciplinary Matters.** Dealing with an employee with problems often prevents that person from becoming a problem employee. Progressive disciplinary policies are intended to produce positive rehabilitative results.
- 8. **Retaliatory Discrimination.** Terminating an employee solely because that employee filed an insurance or worker's comp claim is just not smart! If there are other additional reasons for termination and the discharge policy is applied evenly to all employees, it can be done — but with great caution.

- 9. **Loading Down Managers Non-management Tasks.** Managers can't manage and your supervisors can't supervise if they are burdened with too many collateral or even unrelated tasks. Wasting time of good managers is wasting good money.

- 10. **Don't Forget the “Golden Rule.”** Your employees will treat their job as well as their job treats them. Let your employees (and managers) know that you have high expectations of them, and let them respond to those expectations. Chances are, all will succeed! That's teamwork.

Employers make great investments in employees — both in time and finances. Avoiding these mistakes will result in a good return on those investments.

