

**Avoiding Employee Lawsuits** *Continued from Page 3*

Disabilities Act of 1990 (ADA) prohibits employment discrimination against qualified individuals with disabilities. The ADA applies to employers with 15 or more employees. The Equal Pay Act of 1963 (EPA) prohibits wage discrimination between men and women in substantially equal jobs within the same establishment and applies to most employers. Each of these laws has various interpretations and implications that could affect you.

**But what can you do to avoid a lawsuit?**

Although you can never be absolutely sure you won't be sued by an employee, there are steps you can take to reduce your risk. Consider some of the key areas of exposure: hiring practices and policies, accommodations for the handicapped, communications with unsuccessful job applicants, job descriptions and qualifications, job posting policies and practices, benefit, pension and retirement plans, performance standards, reviews, rewards and sanctions, employee evaluations, and the training of management personnel. In future articles, I will explore some of these areas in more detail. In general, information, documentation and communication are your key defenses. A general understanding of current employment law and a knowledge of your rights and responsibilities is also key. Take care to set up systems that prove employees receive fair treatment. If you are a large employer, plan to do all you can to help those employees who are affected by downsizing with counseling, severance pay and other transition assistance.

**If you are sued....**

Keeping up with changes in state and federal laws that could affect your company can be a daunting task. Bookmark our website to get

the latest news or email your questions to us. If a charge of discrimination through the New Jersey Division on Civil Rights or Equal Employment Opportunity Commission (EEOC) is brought against your company, owners may try to resolve the charge using the EEOC's free mediation program. It is of course advisable to retain experienced counsel to help guide you through the bureaucratic maze of dealing with these public agencies. If you aren't sure if your business is covered by these laws, or you have questions about your rights and duties, contact me to arrange a consultation. And remember, anyone who believes that his or her employment rights have been violated may file a charge of discrimination with EEOC and by law, the EEOC must accept the filing of a charge and at a minimum, perform an investigation.

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**Biz-Law Briefing**

A Practical Journal for Closely-Held and Family Businesses

**Thoughts About Your Business Structure**

*By Gary R. Botwinick, Esq.*

When a lawyer meets with a client starting a new business, the issue of "choice of entity" is often the first topic discussed. What exactly does this term mean? "Choice of entity" discussions deal with the legal form that a new business will take. As you probably know, there are legal creations that allow a business to take on an existence apart from its owners, even though the owners still control the business.

Corporations and partnerships were the two traditional legal entities that allowed this. But that list has grown longer to include limited partnerships, limited liability companies, and Subchapter-S corporations.

Why is a "choice-of-entity" decision important to an entrepreneur?

Business owners can be liable for the obligations of their

business, depending upon the form of entity used to operate the business. These liabilities might include tax liabilities, contract obligations and tortious (think slip and fall) injuries caused by their business. The owner's personal liability often hinges on the type of legal entity chosen.

With the proper choice of legal entity, the business owner can focus on the objectives of the business and worry less about personal exposure for business liabilities.

Deciding on what type of entity to use is one of the more important decisions a start-up business venturer faces. The ability to sell your ownership interest in a business, the ease of later capital infusions, the relationship between co-owners, and, of course, liability for the business's tax or legal problems are all dependent upon the choice of entity. The



**Partnership, Corporation or Sole Proprietorship...the structure you choose will be the foundation for your success.**

Closely-Held Business Group at Einhorn, Harris, Ascher, Barbarito, Frost & Ironson can assist you and your clients in assessing the risks and rewards of the various choices available to a start-up business. Every single fact concerning a business is relevant to the Choice-of-Entity decision. Not all of them are of equal importance, but they all matter to some degree. For almost all

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**Special points of interest:**

- Choosing a business structure can have long-lasting effects.
- Succession planning is a family affair.
- Employee lawsuits can happen to the best employers.
- Seminar for CPAs
- Visit us online at [www.einhornharris.com](http://www.einhornharris.com)

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**Next in Line...**

*By Gary R. Botwinick, Esq.*

Entrepreneurs who succeed, do so because they are driven individuals who typically possess optimistic personalities. They are, understandably, focused on developing a business plan, driving sales and making money. However, frequently they fail to consider what happens to the business upon their death or the death of a business partner.

If you or one of your business partners dies without a business succession plan in place, the interest typically passes to a spouse or children. Suddenly the company has new partners who may know nothing about the business. Business succession planning is a critical strategy to help ensure that a business continues on after the death of one of the partners.

A well-thought-out business succession plan often has a

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**ABOUT OUR FIRM**

Our twenty-five lawyers practice in a wide variety of areas: Commercial Litigation, Employment Law, Tax Matters and Business Planning, Personal Injury and Workman's Compensation, Criminal Law, Family Law, Real Estate, Wills, Trusts and Estates, and Zoning and Land Use. Our attorneys consider their relationship with you, their clients, as genuine and life-long. Our experience means that we can be there to help you and your entire family navigate through all of life's legal challenges.



The Firm's Closely Held Business Group  
Standing 1-4: Timothy J. Ford, Jason R. Rittie, Andrew S. Berns;  
Sitting: Theodore E.B. Einhorn, Gary R. Botwinick

**A Message from the Senior Partner of the Firm**  
**Theodore E. B. Einhorn**



Having practiced in Morris County and throughout New Jersey for many years, specializing in the areas of zoning and environmental matters, I have a keen interest in our community, and our firm is committed to serving its needs. Throughout my career, I have had the privilege of meeting many of you. Some may have known me as the Municipal Attorney for Rockaway Township, Netcong Borough and Denville Township. Or, you may have read about the many commercial cases in which I represented business clients in commercial matters

and tax appeals. Our firm is made up of attorneys in a broad range of practice areas and you can get to know us all better by reading our articles here and visiting us on the web.

With this publication, we are reaching out to closely-held business owners as the life-blood of the community. Every business, no matter what the size, deserves an effective legal advocate. And this will be the first of many forums for sharing ideas, information and news that will affect your business every day. From planning and formation to sale or dissolution, our objective is to help you with your legal matters so that you can concentrate on growing your business. We look forward to working together on your success.

**"Our relationship with you is genuine and life-long."**

**Events, Seminars, and Publications**



Throughout the year, our Firm conducts seminars, hosts and sponsors events, and publishes newsletters, pamphlets and articles. All are designed to give us the opportunity to share the latest about urgent legal issues affecting you and your clients or customers.

By participating, you gain knowledge and insight that you can use in your business. Learn how a relationship with Einhorn

Harris can help you. From our point of view, we appreciate your feedback and interaction with us, so that we can meet and exceed your expectations every day.

**Events:** November 14th is the first in a series of Seminars for CPAs.

**Publications:** Visit our website to subscribe to our E-Newsletter and to obtain copies of our Practice Area Articles authored by our attorneys.

**4th Quarter Events**  
**FREE Seminar for CPAs:**  
**"The Critical Legal Issues For Business Owners!"**

**When:** November 14, 2007  
**Where:** Our offices at 165 East Main Street, Denville, NJ

To reserve a seat in our next seminar, sign up by email to [cpessolano@einhornharris.com](mailto:cpessolano@einhornharris.com)

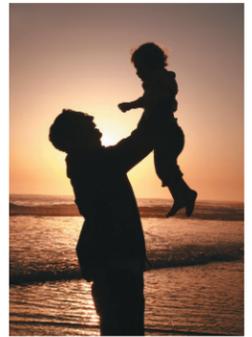
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**Next in Line...** *Continued from Page 1*

- number of key advantages over no plan at all:
- It places a value on the business or establishes a method to determine the value at time of death. The partners agree in advance as to how the business will be valued, so the remaining partners can buy out the deceased partner's interest at a price that is fair to all.
- Life insurance funding can provide liquidity to purchase deceased members' interests ensuring timely payment to the deceased partner's family.
- The beneficiaries of the deceased partner receive a fair price for the share of the business, because the price is set in advance, and they know the deceased partner had the opportunity to agree to the value of the business.
- It creates an instant market for a business interest and facilitates the settling of the deceased owner's estate, as the value of the business is known. Without a succession plan, many estates can be held up for months or years while value is determined.

Business succession plans typically involve the use of a Buy-Sell Agreement, outlining the terms and the value of the business or the valuation method to be used at time of death. These plans may be funded or unfunded. They will typically set forth not only the amount to be paid for a deceased partner's interest, but also the manner of payment (e.g. lump sum or installment payments over time).



**The family business can be a way to share your vision and create a legacy.**

**Your Business Structure** *Continued from Page 1*

start-up companies, the considerations that should be in the forefront are not the sale of ownership interests to the public or venture capital financing—these things come later (hopefully!). Instead, the initial focus should be on:

- tax and tort liability issues;
- cost of maintenance of the entity;
- protection of intellectual property (very important and often overlooked);

- entity size and complexity;
- regulatory requirements that the local, state or federal government has placed on the proposed business activity and other similar issues.

These issues are much more relevant to a young business, albeit less exciting than "going public" or getting venture capital money. Still, success depends upon them.

**Attorney PROFILE**

Gary R. Botwinick holds an LL.M. in taxation from NYU School of Law.



Mr. Botwinick chairs the Firm's Tax/Trusts and Estates Practice. To read a complete profile on Gary, visit [www.einhornharris.com](http://www.einhornharris.com) and click on "Attorney Profiles."

**"Every single fact concerning a business is relevant to the Choice-of-Entity decision."**

**Avoiding Employee Lawsuits** *By Andrew S. Berns, Esq.*

**Protect Yourself!**

Will your employees sue your company for discrimination? You hope not. After all, the policies, procedures, meetings, training and employee programs you design are intended to create an environment of professionalism, trust and mutual respect. But despite the best efforts of some of the most successful companies, the headlines tell all: "Wal-Mart Close to \$2 Million Settlement in Gender

Discrimination and Retaliation Lawsuit," and "Lucent Technologies Employee gets \$195,000 settlement in Age Discrimination Lawsuit."

**First, let's review the current state of the law:**

The Laws Against Discrimination in the Workplace

Title VII of the Civil Rights Act of 1964 prohibits race, color, religion, sex and national origin discrimination

and it applies to employers with 15 or more employees. The corresponding New Jersey statutory scheme is known as the New Jersey Law Against Discrimination and applies to all employers. The Age Discrimination in Employment Act of 1967 (ADEA) prohibits age discrimination against individuals who are forty years of age or older and applies to employers with 20 or more employees, and the Title I of the Americans with

**Attorney PROFILE**



Andrew S. Berns is the Chair of the Firm's Commercial Litigation practice and tried cases for over 20 years in State and Federal Court and has an active practice in Alternate Dispute Resolution. As a Court Assigned Mediator, he participates in litigation resulting in multi-million dollar settlements in complex commercial matters, through Arbitration, Mediation and as an advocate on behalf of commercial clients.

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