

Staying out of court

In all but the most extreme cases, you want to avoid going to court either as a plaintiff or a defendant. Think about it. Do you really want to shell out the huge legal fees you are likely to incur? Or have your time tied up for months or even years? Do you want, after all the expense and time, to lose your case? Courts offer uncertain outcomes. Even if you are right and see the situation as clear-cut, you can still lose your case.

You might not be drawing a big salary, but your time and the time of your key managers is valuable. Time spent in court or thinking about a court case is time spent away from growing your business.

The outcome of going to court is extremely uncertain, and a loss could significantly change the way you do business. And, win or lose, a court case will have the same effect on your cash flow—flowing out.

The uncertainty of the outcome can be exacerbated by the timing of the outcome. It is difficult to predict how long a court case will last. While a small claims hearing might not take years, the possibility of any other type of case lasting that long is quite real.

If you suspect that you might eventually be forced to pay out a settlement, you might get lulled into delaying the end of a court case. But remember that you need to disclose outstanding suits in your financial statements, and such disclosures may affect your ability to borrow or raise cash. Also, settlements can be subject to interest.

Avoidance

The best way to stay out of court is to avoid problems before they occur. Run your business within the law. Run your business with humanity—make your workplace a fun place to be. Develop good, solid employment policies, especially in the critical areas of hiring, promoting, firing, and sexual harassment.

Use contracts whenever appropriate, with all the key details spelled out clearly in writing. And include in your contracts, whenever possible, a proviso that directs all disputes into binding arbitration, not court.

Finally, don't be shy about consulting an attorney whenever you have questions about employment or business decisions that may portend a legal risk for you. Spending a few bucks for a half of hour advice here and there is certainly worth saving the major expense of a court battle.

Early response

In many potentially litigious situations, an early response may avert a legal suit. Often legal claims arise out of misunderstandings, which good communication can alleviate.

For example, if you have decided not to pay the full bill invoiced by a supplier because the quality of the goods delivered was not satisfactory, call the supplier with your complaint immediately. Back up your verbal communication with a letter to that same supplier. You need to get the vendor to see the quality issue from your point of view and instill empathy for your situation. Just not paying the bill, without apprising the vendor of the problem, is begging for a court appearance.

Similarly, if a customer is not happy with goods supplied by you, handle the situation as soon as possible. By listening to that person's complaint, trying to understand the problem from his or her perspective, and showing empathy for the situation, you have gone a long way towards avoiding a legal suit. And, you may have retained the customer!

If an employee complains about sexually hostile behavior in your workplace, promptly take action to eliminate the behavior. This may satisfy the victim and keep you out of court altogether. But even if the case does end up in court, your attempts to correct or alleviate the problem will count in your favor.

Generally, in any negative business situation, respond quickly and maintain dialogue and rapport with the other party. This policy never hurts!

Settlement meetings

A face-to-face settlement meeting with the opposing party can help avoid the courtroom. Any such meeting should be conducted on a peer-to-peer basis. This means company president to company president, for example. Of course, if you are the sole proprietor of a company and the other party is IBM, don't expect the president of IBM to meet with you. But do insist on meeting with someone in as similar a position to yours as possible. For example, if you are trying to resolve a problem with a large supplier, try to speak with a product manager or regional sales manager—not your regular sales representative or the purchasing agent for your account.

If you encounter problems in attempting a settlement with another party through informal meetings, try a more formal approach. Try meeting in a neutral location with attorneys for both parties in attendance.

The presence of attorneys signals confidence. It sends the message that both you and the disputing party are willing to pursue the matter through the courts if necessary. Through such a meeting you will be able to ascertain the strength of the opposing party's claim or defense, and hear his or her arguments much as you would should the case go to court. Of course, the opposing side will be able to size up your case or defense as well.

Arbitration

If you can't resolve an issue with calls or meetings, consider binding arbitration. In this case, both parties agree on an arbitrator (often a retired judge arranged for through an arbitration organization) and agree that the results of the arbitration will be binding and may be entered into the prevailing court. Be sure to get the agreement to arbitrate in writing.

In court

There are exceptions to avoiding or delaying an appearance in court. Sometimes you will want to get there as quickly as possible. If your rights as a small business owner are being wantonly trampled on by a large corporation, think about going for it. Corporate giants typically figure that a small entrepreneur will back down because he or she hasn't got the funds to do legal battle or will jump at the first pathetic settlement offered.

But do be absolutely sure that you want to pursue your claim through to resolution before you file with the courts. Have your attorney advise you. Find out what the costs might be, what the time element might be, and what the various outcomes, good and bad, might be.

