

## Area attorneys share five quick ways to give your firm a fall tuneup

By [Stephen Nellis](#) on October 14, 2011.

Fall is in the air. Like most business owners, you probably started 2011 with ambitious goals. And then the first sight of Halloween candy and cornucopias in the grocery store reminds you: From here on out, it's a mad scramble to Dec. 31.

First, accept that you're going to forget some things and push other things into the next year. Next, focus on what you can accomplish in the next two months.

In that spirit, I informally polled attorneys around the region for some bite-sized, actionable items to give your business a legal tuneup before year's end. Here's what they had to say:

### • **Business basics: Michael Velthoen, Ferguson Case Orr Paterson, Ventura**

Review and, if necessary, update your buy-sell agreement. Too frequently, the partners or shareholders place the buy-sell agreement in a file and fail to update it to reflect changed circumstances.

If you don't review your buy-sell agreement on an annual basis, you may find yourself in an unnecessary dispute in the event of death, divorce, retirement or other triggering event.

The most common mistake is to fail to have new partners or shareholders sign the buy-sell agreement. If a partner or shareholder marries, you may need the spouse to sign the buy-sell agreement. Less frequently — but no less importantly — the valuation methodology is outdated. Buy-sell agreements may also be an important part of an estate plan.

### • **Employment law: Jonathan Light, LightGabler, Camarillo**

Call your insurance broker and price employment practices liability insurance to protect against runaway expenses of litigation. To avoid unpredictable juries and save on legal fees, implement arbitration with all new hires and existing employees. These are two excellent hedges against expensive employee lawsuits.

On the wage and hour front, which can subject employers to major penalties, consider the following: Review the status of each of your salaried employees, and make sure that they should be on salary, and are not eligible for overtime.

Make sure that your supervisors are enforcing the meal and rest break rules. Review your pay practices to ensure that you are properly paying employees. Rounding practices may be wrong, timesheets may not be filled out properly, meals may not be properly recorded, travel time may be missed and expense reimbursements may be overlooked.

• **Succession planning: George Short, shareholder, Brownstein Hyatt Farber Schreck, Santa Barbara**

The things that are key are less calendar-related and more current economic environment related, like low interest rates and probably low valuations for businesses.

If someone wanted to do some passing of assets or business interests to their family, they would want to do so sooner than later because (i) interest rates are low, meaning that planning techniques like loans to family members, sales to intentionally defective grantor trusts and GRATs are especially valuable, and (ii) values are low so, assuming the economy and the markets ever rebound, the probability of substantial appreciation in value is maximized, meaning the opportunities for large value shifts to the next generation are greater.

• **Intellectual property: Steve Sereboff, SoCal IP Law Group, Westlake Village**

- Register your trademarks — company name, product name, logos, slogans.
- Buy some more domain names — sound-alikes or natural misspellings.
- Ask your patent attorney about the impact of the new America Invents Act. There is a new post-grant opposition process, and also the patent system is switching from first-to-invent to first-to-file.
- Have your IP counsel look into patent trolls that will most likely come knocking at your door.
- Update your employee and contractor blanket IP assignment agreements, and your non-disclosure agreement form.
- Double-check that the graphics and images on your website are authorized. If you don't have documentation showing you have clear rights, go get them.

• **Insurance: David Wood, Anderson Kill Wood and Bender, Ventura**

Review every application for insurance your business has submitted during the year, and double-check to make sure everything is factually accurate.

If you make a mistake on an insurance application (even an innocent one) about something material to the risk (your gross sales, the number of employees, whether your building has fire sprinklers, etc.), your insurance company can rescind coverage, meaning it may give back your premium and void your policy — after you've submitted a claim.

When this happens, you lose coverage not only for the pending claim, but also for all other claims that might arise during the policy period. Rescission is the worst thing that can happen to your insurance programs, and unless you take steps to ensure that every application is scrupulously accurate (and double-check throughout the year), your business is vulnerable.

- *Stephen Nellis writes a monthly column on the legal business. Contact him at [snellis@pacbiztimes.com](mailto:snellis@pacbiztimes.com).*