

Business Regulations: A Fact of Business Life

“For Better or Worse; ‘til Death Do Us Part”

This phrase taken from the traditional marriage wedding vows could just as easily apply to the relationship between business and government in the U.S and in particular in California. As long as you are in business you will be under the effects and the control of some, if not many, different government agencies and their particular regulations. Whether through local, regional, state, or federal regulations, government control of small business is both historic and contentious. Regardless of your opinion as to the proper role of government in these matters, if you are a business owner you must comply with the appropriate regulations or, in most instances, face potentially severe consequences. Below is a discussion of the more common regulations facing businesses in California.

Taxation

Federal (IRS) taxes - unless your business is a “C” corporation the profits of the business will “pass-through” and become the tax obligation of the owner(s). In most cases this liability is based on the amount of money or taxable benefit each person receives from the business. “C” corporations are taxed at the rate currently set in code. Any after-tax profits distributed to “owners” (shareholders) in the form of dividends are subject to the appropriate tax on their personal return.

State (FTB) taxes - the current corporate tax rate is 8.84% for “C” corporations and 1.5% for “S” corporations that are non-bank entities (2008 Rate). The rate is higher for banks and other financial corporations. Pass-through income from S-Corp, LLC, partnership, and sole-proprietor business activities is the owner’s/shareholder’s responsibility and taxed at the appropriate personal tax rate.

In CA, there is a minimum \$800 tax for any Business Entity (Corp or LLC) whether it has revenue, profits or not. This “Franchise Fee” is due at the beginning of the year. Deadline for payment is April 15th of the current tax year.

Year	S-Corporation	C-Corporation	Bank and Financial C-Corporation	Financial S-Corporation
1997 - Current	1.5%	8.84%	10.84%	3.5%
1995 - 1996	1.5%	9.3%	11.3%	3.5%
1994	1.5%	9.3%	11.470%	3.670%
1993	2.5%	9.3%	11.107%	4.307%
1992	2.5%	9.3%	11.007%	4.207%
1989 - 1991	2.5%	9.3%	10.741%	3.941%

Sales (Use) Tax - is paid to the State Board of Equalization. If a business is engaged in selling tangible property it must pay the appropriate amount of sales tax based on their local rate to the state. Businesses are given the authority to act as an agent of the state. This means they have the legal right to collect this tax from retail customers (end-users). But, the business itself is responsible for paying this tax to the state even if the business fails to collect the appropriate tax from its customers.

Property Tax- Forwarded to the State after being collected by the local County taxing entity on real property owned by the business. A portion of P.T. is distributed to the county, cities, schools and special districts where the tax originated. Some counties have a small business property tax charged annually on business assets including equipment and inventory owned by the business.

Business License Fee (sometimes a “Mil” tax)- paid to the local government within whose jurisdiction the business is located and/or primarily operated. The key to “jurisdiction” is where business is being “transacted” not necessarily “delivered”. Example: UPS and FedEx.

Employer Taxation and Regulations

Payroll Taxes/Withholding- Employer is responsible for paying certain taxes related to having employees. Includes: FICA, FUTA, SUI, and state employment training tax. Employer is also responsible for withholding and forwarding to the appropriate entity certain employee paid taxes including: Federal and State income tax, FICA, and SDI. All employers are required to file for federal EIN and state EDD employer numbers.

Employee vs. Independent Contractors: Employers sometimes want to use “I.C.” status to avoid the higher cost of having employees and shifting the FICA burden to the worker. Because of changes in the State worker’s comp laws and State and Federal Tax code, this is increasingly difficult to do so “legally”. The penalty of not complying with the IRS or State laws by mis-classifying employees as I.C.’s is potentially very costly.

Worker’s Comp - Under California law every employee in the state must be covered by worker’s compensation insurance. Workers' Comp provides benefits to employees who are injured or become ill during the course of or due to employment. It is the legal responsibility of all employers to carry W.C. insurance to cover the cost of occupational injuries, illnesses, and permanent disability. This insurance requirement is mandatory even if you have only one part-time employee. Companies based out-of-state with employees working in California must also have California workers' compensation insurance. In most cases Worker’s Comp is purchased from an authorized carrier but some large employers can be “Self-Insured” if approved by the State.

Wage and Hour Regulations - State and Federal minimum wage, hour, and working conditions regulations must be followed or the risk of financial penalty or criminal prosecution is very real.

Hiring Requirements - Both State (Fair Employment and Housing Act) and Federal (Fair Labor Standards Act) laws require employers to follow proper/legal hiring and employment practices. Anti-discrimination laws are very strict and have extreme penalties for violators.

OSHA/Cal OSHA- Federal and State workplace safety laws.

Others- FMLA, CFRA, ADA, PFL, and whistle blower laws.

Commerce Regulations

Professional Licenses - Certain business professionals are required by their state to be licensed.

Contractor’s license – California State Contractor’s Licensing Board regulates and requires that all construction related activities be performed by a licensed contractor. Anyone performing construction work in California that totals \$500 dollars or more in labor and materials must be licensed by CSLB. Licensed contractors must demonstrate at least 4 years of experience/education in the trade for which they are licensed, be fingerprinted, have an FBI background check, and be bonded.

Business registration - fictitious business name, trademarks, Financial, insurance, real estate professionals.

Uniform Commercial Code (UCC) - regulations concerning bills of lading, warehouse receipts, letters of credit, extension of business credit, payment of accounts, workmen’s liens, and other standard commerce practices.

Consumer Protection Regulations

Unlawful Trade Practices - protects consumers from deceptive or unsubstantiated advertising. Enforces many of the consumer credit statutes, including the Consumer Leasing Act, the Credit Practices Rule, the

Equal Credit Opportunity Act, the Fair Credit Billing Act, and others. Protects consumers with Auto repairs, smog checks, product labeling, medical practices, and hundreds of other consumer services. Warranties and Guarantees - Express or Implied Warranties, "Lemon Law", Repair or Replace Provision, Service Contracts, Warranties for Used Goods, Warranties in Lease Transactions, Workmanship.

Zoning Regulations

Zoning and land use regulation in California is granted to local government agencies. Cities and counties can establish the specific zoning laws that allow and restrict certain business activities in their communities based on reasonable public health and safety concerns.

Environmental Regulations

Both State and Federal EPA, water and air quality agencies, and other environmental laws effect small business operations and the disposal/discharge of hazardous materials. Even the discharge is gray water, odors, and certain types of trash are in some cases heavily regulated and often have disposal fees applied such as used tires, auto parts, lubricants, batteries, paint, pesticides and many others,

e-Waste: California recently enacted a law that requires the proper disposal of all electronics including: computers and all components, T.V., any audio or video device, portable electronics, cell phones, and **all** batteries. Enforcement is as yet voluntary but more strict enforcement is coming. If you purchased any electronics in California in the past few years you no doubt noticed that you are being charged an up-front fee for disposal.

Which Regulations Apply to You and How?

Taxes

List the different taxes your business will likely face this year. _____

Employer Regulations

List the types of Employer Regulations and how they will likely affect your business over the next year.

Commerce or Consumer Protection Regulations

What if any type of Commerce or Consumer Protection Regulations does your business face?

Zoning or Environmental Regulations

What Zoning or Environmental Regulations does your business face? _____
