



LEGAL WEAPONS

FOR THE WORKING WOMAN

January 2012

RUPP, BAASE, PFALZGRAF,
CUNNINGHAM & COPPOLA LLC
Attorneys at Law

Legal Weapons provides useful legal information and resources for successful businesswomen.

UNPAID DEBTS - ARE YOU STUCK?

You landed the client, provided the product or service, but now the client hasn't paid. Are you stuck? Not necessarily, but it may take a bit of work to collect that unpaid debt.

It may be in your best interest to negotiate a payment plan to give your customer some flexibility and ensure payment.

Before pursuing legal means to collect, business owners should consider contacting the debtor and discussing the situation, particularly if there has been a positive relationship in the past. It may be in your best interest to negotiate a payment plan to give your customer some flexibility and ensure payment. In some cases, a business

owner may choose to have no contact with the debtor and hire a collections agency instead.

Some businesses have come up with creative solutions to the problem, including having the debtor provide products or services in lieu of payment for outstanding debt. Other companies have made agreements to forgive debt in exchange for new business referrals.

Using the courts for collecting unpaid bills can be expensive and time-consuming but may be the only means to recover some or all of what is owed. In certain instances, drawing up the lawsuit papers and providing them to the debtor with a "drop-dead" date for payment results in payment being made.

Still not sure what the best approach might be for your business or how to go about using one of these measures? Join us at the *Protecting Your Assets* seminar on January 19 at Sonoma Grill at 4 pm to learn more!

PROTECT WHAT YOU HAVE BUILT!

Attend our *Protecting Your Assets* Seminar and be Eligible to Win an Apple iPad 2

A lot goes into creating and building your business, and protecting your assets, including your trade secrets, your customer relationships, and your accounts receivable, is critical to your future success! Join us on January 19 to learn more about strategies to protect your personal assets and your company's assets, and you'll be eligible to win an **Apple iPad 2**.

Learn more about non-competes, buy-sell agreements, collecting overdue A/R, wills, powers of attorney, health care proxies, and other strategies that can help you plan for the future of your business.

Thursday, January 19
Sonoma Grille, 5010 Main Street, Amherst

4:00 PM Registration
4:15 PM Presentation
5:30 PM Cocktail Reception



Registration is \$15 and payable to *Girls on the Run*.

RSVP to Erin Harvey by Jan. 13 at 854-3400 ext. 230 or legalweapons@ruppbaase.com.

All attendees are eligible to **win the iPad 2**. Must be present to win.

Seminar proceeds support Girls on the Run, an afterschool program that prepares girls in grades 3-8 for a lifetime of self-respect and healthy living.

WILL A NON-COMPETE AGREEMENT PROTECT YOUR COMPANY?

For employers in highly-competitive fields, non-compete agreements are on the rise to protect sensitive processes, technologies, or other trade secrets and information. In order to protect their interests, more employers are asking employees to sign agreements that restrict the employee's ability to work in the same field if they leave the company.

Non-compete clauses usually address three key areas: geographic restrictions on where a former employee can work; the scope of services and conduct that the employee is prohibited from engaging in; and the duration limitation, with one year being the typical time constraint. A non-compete clause must protect a legitimate business interest, such as trade secrets, confidential information, or customer relationships, rather than just making it difficult for an employee to switch jobs to a competitor.

Unfortunately for the employer, courts often are reluctant to enforce these provisions, particularly if they are viewed as imposing an unreasonable hardship on the former employee. Whether a non-compete clause is legally enforceable is determined by state law. What might be enforceable in one state may not be enforceable in another.

In all states, these contract provisions are more likely to be upheld if they are viewed as reasonable. If the geographic scope is narrow, the duration is reasonably short, and the type of activity is limited, the agreement has a better chance to be enforced.

A non-compete clause must protect a legitimate business interest, such as trade secrets, confidential information, or customer relationships.

REMINDER:

WAGE THEFT PREVENTION ACT

The New York State Wage Theft Prevention Act requires written pay notices to be provided to employees starting in 2012. The notices must include:

1. rate of pay,
2. basis for the pay,
3. allowances, if any,
4. regular pay day,
5. name of employer and its DBA, if any, and
6. employer's main address, mailing address, and telephone number.

The consequences for failing to provide the required notices can be substantial. Standard forms are available at the New York State Department of Labor website:
www.labor.ny.gov/formsdocs/wpellsformsandpublications.shtm.

UPDATE:

NLRB EMPLOYEE RIGHTS POSTER

The National Labor Relations Board (NLRB) has agreed to postpone (again) the date by which all employers must post a notice of employees' rights under the National Labor Relations Act. This time, it has done so at the request of the federal court judge in Washington, D.C. who is presiding over a lawsuit filed against the NLRB by the U.S. Chamber of Commerce. The Chamber of Commerce sued the NLRB arguing that it doesn't have the power to force employers to post the NLRA-rights notice. The NLRB claims that postponing the effective date of its new rule may help resolve this lawsuit.

While the outcome of the lawsuit still is up in the air, you can be assured that you need not worry about posting the notice until at least April 30, 2012.

Articles are drafted by Rupp, Baase, Pfalzgraf, Cunningham & Coppola LLC. Clients and friends are free to copy and to distribute the contents of this newsletter with proper attribution. The information contained in this newsletter does not constitute legal advice, and it should not be relied on without consulting a licensed attorney. For answers to your legal questions, please contact:

Lisa Coppola, Esq.
coppola@ruppbaase.com
716.854.3400, ext. 218

Johanna Healy, Esq.
healy@ruppbaase.com
716.854.3400, ext. 234

Kim Georger, Esq.
georger@ruppbaase.com
716.854.3400, ext. 236

Jamie Batt, Esq.
batt@ruppbaase.com
716.854.3400, ext. 211