

CUETO BUSINESS LAW GROUP

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WAYS

BUSINESS OWNERS

CAN AVOID

LAWSUITS



CUETO LAW GROUP®
INTERNATIONAL BUSINESS ATTORNEYS

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Business Lawsuits Destroy Profits

Every business is at risk of getting sued. Over 100 million cases are filed in U.S. courts every year. Contract disputes, for example, are a common source of liability for businesses. These lawsuits account for 60 percent of the millions of civil cases filed every year. Tort cases are another source of liability. These types of lawsuits include personal injury cases, employment discrimination and intellectual property theft, accounting for a significant portion of civil cases.

In all cases, business litigation destroys profits. Regardless of which side wins, lawsuits force businesses to dole out cash for a business attorney and focus their attention away from growing their business. In the worst-case scenario, even baseless lawsuits have the power to plunge a business into bankruptcy.

A study on [small business litigation](#) conducted nearly two decades ago found that legal costs for actual litigation ranged from \$3,000 to \$150,000. That number has likely skyrocketed to two or three times that amount since the study was conducted. Moreover, it is estimated that between 36% to 53% of small businesses are involved in at least one lawsuit in any given year. Another [study on corporate litigation](#) found that nearly 90% of U.S. corporations are engaged in some type of litigation, and the average company balances a docket of 37 lawsuits at any given time.



Advanced Lawsuit Avoidance Techniques

Thankfully, you can take steps to keeping your business profitable — from making sure your insurance policies and cybersecurity are airtight to getting a business law attorney to double-check your contracts. In doing so, you will minimize the risk that a lawsuit will be filed against your business. The key to managing this risk is to engage in smart planning using advanced lawsuit avoidance techniques.

While no advice can prevent litigation outright, there are several steps that you can follow to greatly reduce the risk of litigation impacting your company.

Business Lawsuits by the Numbers:

- **36% to 53 %** of small businesses are sued in a given year.
- **31%** percent of lawsuits filed against small businesses are for breach of contract.
- When a case goes to trial, it can cost anywhere from **\$3,000** to **\$150,000** to resolve.
- The median combined costs of lawsuits for both parties can easily top \$50,000 and reach above **\$100,000**:
 - ① **\$54,000** for a premises liability lawsuit such as a slip and fall suit.
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 - ⑤ **\$122,000** for a malpractice lawsuit such as a medical malpractice suit.
- **95 percent** of lawsuits are settled before they go to trial.

The following tips and tricks are broken up into six different categories. They are:

- | | |
|-----------------------------|-------------|
| ■ Employment and Labor | ■ Contracts |
| ■ Intellectual Property | ■ Finances |
| ■ Cybersecurity and Privacy | ■ Insurance |

Employment and Labor

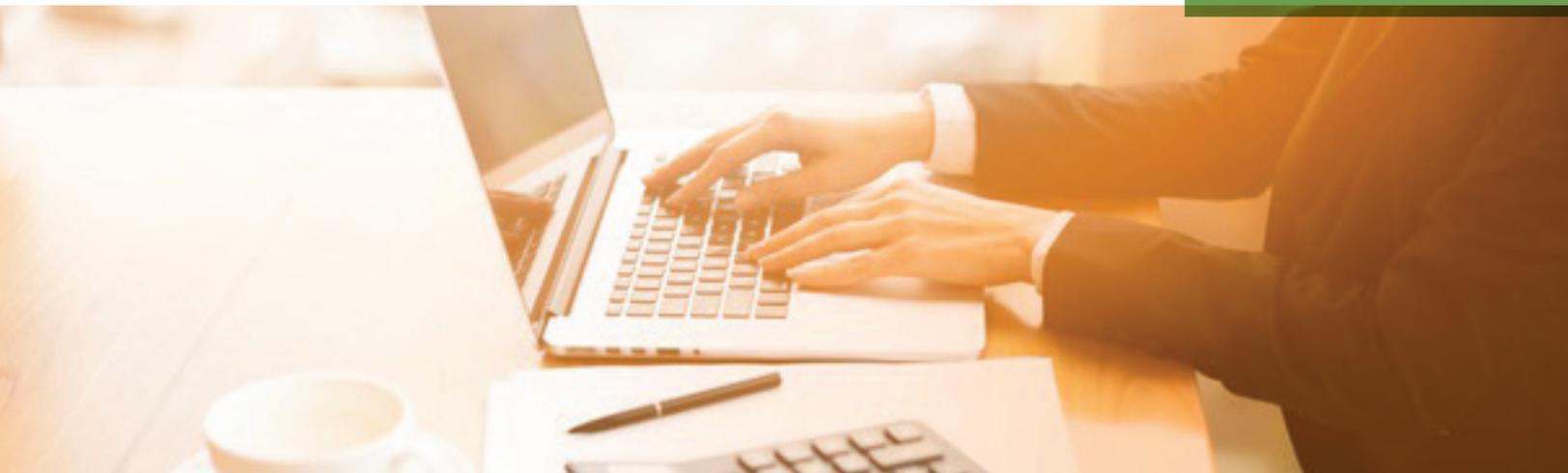
Employment discrimination and wrongful termination are both among the top lawsuits against businesses, so it's important for businesses who want to avoid this fate to employ sound labor practices.

1. Familiarize Yourself with Labor Laws

Numerous anti-discrimination laws govern the workplace at both the state and federal levels. These regard issues such as:

- ❑ Workplace harassment
- ❑ Privacy rights of employees
- ❑ Discrimination

It's crucial for business owners to familiarize themselves with these laws and strictly adhere to them. The first step is to discern which laws apply to your specific business, including those at the state level. The second step, then, is to come up with enforceable policies and practices to make sure you comply with each one.



2. Understand the Terminology

It's nearly impossible to comply with the aforementioned labor laws if you don't know what their key terms mean. Federal laws in particular can be difficult to interpret. Here are the [federal definitions](#) for three of the most important terms to familiarize yourself with:

- 1 **Harassment:** Unwelcome conduct based on disability, color, national origin, race, religion, age, sex (including pregnancy), or genetic information.
- 2 **Retaliation:** The firing, harassment, demotion, or similar act committed by an employer to punish an employee who filed a discrimination complaint or lawsuit.
- 3 **Wrongful Termination:** Firing an employee in violation of the law.



3. Hire a Human Resources Consultant

Despite what you might think, small businesses are actually more vulnerable to employment lawsuits than larger companies. The main reason for this is that many small businesses don't have a human resources (HR) professional on staff.

Hiring an in-house HR representative is important, but you should also consider [hiring a consultant](#). In addition to helping with the tedious hiring process and providing performance management, an HR consultant ensures your business remains compliant with every pertinent employment law. This is especially important if you're looking to expand, as each new state and country comes with its own set of laws to abide by, and you'll want to avoid an international lawsuit at all costs. Additionally, HR consultants offer expert advice on various facets of your business, from employee training, developing an employee handbook to company reputation.

4. Hire Competent Lawyers

Although larger businesses have the luxury of in-house legal departments, most smaller businesses must hire outside counsel. However, you shouldn't have the mindset that an employment or business lawyer is only needed when a lawsuit is already on the table. A large part of an employment lawyer's role is to help businesses avoid lawsuits before they happen.

Employment lawyers can help protect your business against lawsuits by:

- ❑ Coming up with employment policies and drafting employment contracts
- ❑ Providing representation and negotiation in collective bargaining agreements
- ❑ Advising on matters such as hiring, firing, layoffs, and furloughs
- ❑ Helping establish or modify employee benefits

For every other business matter, you should always keep a competent business lawyer or business attorney on standby.

5. Keep Open Communication with Employees

Because employees are the most common plaintiffs in lawsuits, it's absolutely crucial to be upfront with potential employees and treat your current employees well. Here are [some tips](#):

- ❑ In your written job descriptions, include all responsibilities and performance expectations.
- ❑ Clearly communicate you enforce your requirements.
- ❑ Encourage employees to speak up about any workplace issues or performance issues they experience.
- ❑ Establish a discipline plan.



6. Implement a Complaint Procedure

Setting up a detailed procedure for employee complaints offers protection against lawsuits. You'll need to have proof of receipt so that whether or not an employee filed a complaint can easily be proven.

7. Follow a Discipline Plan

It's a good and worthwhile idea for business owners and business partners to establish a specific process to follow any time discipline of an employee is necessary. Sticking to this process can help you avoid an Equal Employment Opportunity Commission (EEOC) lawsuit.

Here is a four-step plan:

- 1 Communicate to the employee that there is a conflict or performance issue that needs to be assessed. Offer constructive criticism in the form of further instruction or verbal feedback.
- 2 If the performance or behavior continues, write down precisely what the issue is. Reference their position's job description where expectations were outlined, and provide them with a copy.
- 3 Come up with an affirmative written agreement that specifies the behavior or performance the employee must improve. Includes your discipline plan as well as the job expectations. Have the employee agree to make specific changes to their behavior or performance.
- 4 Only if the first three steps fail should you resort to firing the employee. Then, you'll have evidence of the entire issue and process.

Intellectual Property

In its broadest sense, [intellectual property](#) refers to any creation of the mind, which includes a wide range of things, from works of art to computer programs or trademarks. Intellectual property lawsuits are on the rise, and fighting them is getting costlier and costlier for businesses. Here's what you need to know about protecting this aspect of your business.

8. Protect Your Intellectual Property

This one is obvious. If you don't want your intellectual property freely available for the world to use, you need to go through the necessary procedures to secure and protect it. This means that you seek patents for inventions, copyrights for works of art, and trademarks for your business's brand.

9. Keep a Close Eye on Your Competitors

Investigate your competitors as well as your market and industry by reading publications, press releases, shareholder announcements, and company updates. This way, you stay ahead of the curve by knowing which products or services might compete with those you offer.

10. Grant Ownership

Whenever you create intellectual property, you should grant ownership to every employee or independent contractor involved in its creation. The easiest way to do this is to have them sign a written agreement that includes details like whether or not company property was used. It's up to you whether this agreement is signed before or after said services.

This helps mitigate arguments and potential lawsuits between employees and employers down the road.

11. Offer Lawsuit Alternatives

If a person or business infringed upon your intellectual property, taking them to court isn't your only option. Before intellectual property litigation ensues, consider the alternative options available, including:

- ❑ Offering a licensing agreement
- ❑ Working together in a joint venture
- ❑ Resolving the dispute through mediation or arbitration
- ❑ Using a minitrial



Cybersecurity and Privacy

As more and more business goes digital, cybersecurity is more important than ever. Here are steps you can take to maintain digital privacy:

12. Opt for Cyber Insurance

[Cyber insurance](#) is a kind of insurance that protects businesses or individuals against risks related to the internet and network threats. These policies typically cover all of the following:

Lawsuits related to data breaches

- ❑ Losses from network security breaches
- ❑ Theft of intellectual property
- ❑ Loss of privacy

If you're considering getting cyber insurance, though, you must come prepared. Because insurers want to minimize any risks, they often subject all potential customers to thorough evaluations of their security protocols and procedures before they will provide coverage.

13. Limit Access to Accounts

It's not a wise practice to grant every employee access to each network, account, or computer system in your business. This creates immense cybersecurity risks and can lead to a number of lawsuits. According to [the Harvard Business Review](#), 60% of all cyber-attacks are carried out by insiders.

It's clear to see why investing your time into [setting and managing user permissions](#) is important, but here are some specific facts to keep in mind:

- ❑ Unrestricted access can cause accidental data exposure.
- ❑ Hackers can get ahold of compromised user logins and credentials.
- ❑ User access opens the door to intentional privilege misuse, such as data breaches.

Although it may take some time initially and make some employees grumble, keeping your passwords private and limiting access to accounts is a simple step you can take to avoid future lawsuits.

14. Back Up Your Files

In the event of a power outage or some other technological breakdown, you need to be able to access your files. At the very most, set up automatic backups for every month. Cloud backups will allow remote access and recovery. In addition, keep hard drives with these files in a fireproof safe or a safe place off-site.

15. Maintain Customer Confidentiality

It's always been important to maintain client confidentiality. However, in today's world of digitalized business, it's more necessary than ever. In the wrong hands, sensitive information can be used to commit fraud, discrimination, and other illegal activities. In turn, this leads to lawsuits your business has to deal with. It also leads to a loss of trust and a blot on your reputation.

16. Maintain Employee and Business Confidentiality

Leaked information about your employees can also lead to lawsuits. Several different categories must be kept strictly confidential. This includes:

- ❑ Personal identifying information of employees, such as social security numbers, home and email addresses, usernames and passwords, and driver's license numbers
- ❑ Management information, such as employee issues, disciplinary actions, future layoffs or terminations, and investigations into employee misconduct
- ❑ Business or proprietary information, such as manufacturing methods, financial data, customer records or lists, and other trade secrets



17. Download and Update Security Software

Because most businesses now operate mostly in digital formats, computer viruses pose a great threat. A virus has the potential to bring down your entire computer system, causing irreparable harm. In addition to halting your business's operation, this incident may cause files to get lost or stolen. This would put you at risk for legal action by clients or suppliers.

If you don't already have them, purchase security software for every device used in your business. These typically need to be updated continuously.

Contracts

Any agreements your business makes with others should be in writing. Contracts can provide a range of defenses if a lawsuit were to arise.

18. Add Specific Clauses

You can add [provisions to contracts](#) that could save you from lawsuits later on. Here are six:

- ❑ Status review meetings upon request
- ❑ Consultation as a compromise to consent
- ❑ Dispute-escalation to higher management
- ❑ Minitrial to senior management for disputes

19. Have a Business Attorney Review Your Contracts

You know your business better than anyone, but no one knows business law better than a business lawyer. Among other duties, a business lawyer can draft or review your contracts, ensure you aren't getting outwitted by those you're doing business with, and negotiate a contract's terms. Having legal counsel available to give you legal advice is one of the best preventative measures you can take to avoid a lawsuit.

20. Define Your Scope of Services

To significantly decrease the likelihood of legal disputes, define the services you offer to each customer. This information may include details about the negotiated products or other services.

In the case of a lawsuit, this kind of documentation shows the exact expectation each party had going into the deal, and it's in the form of a binding agreement. Make sure you record the time and date of each agreement as well.

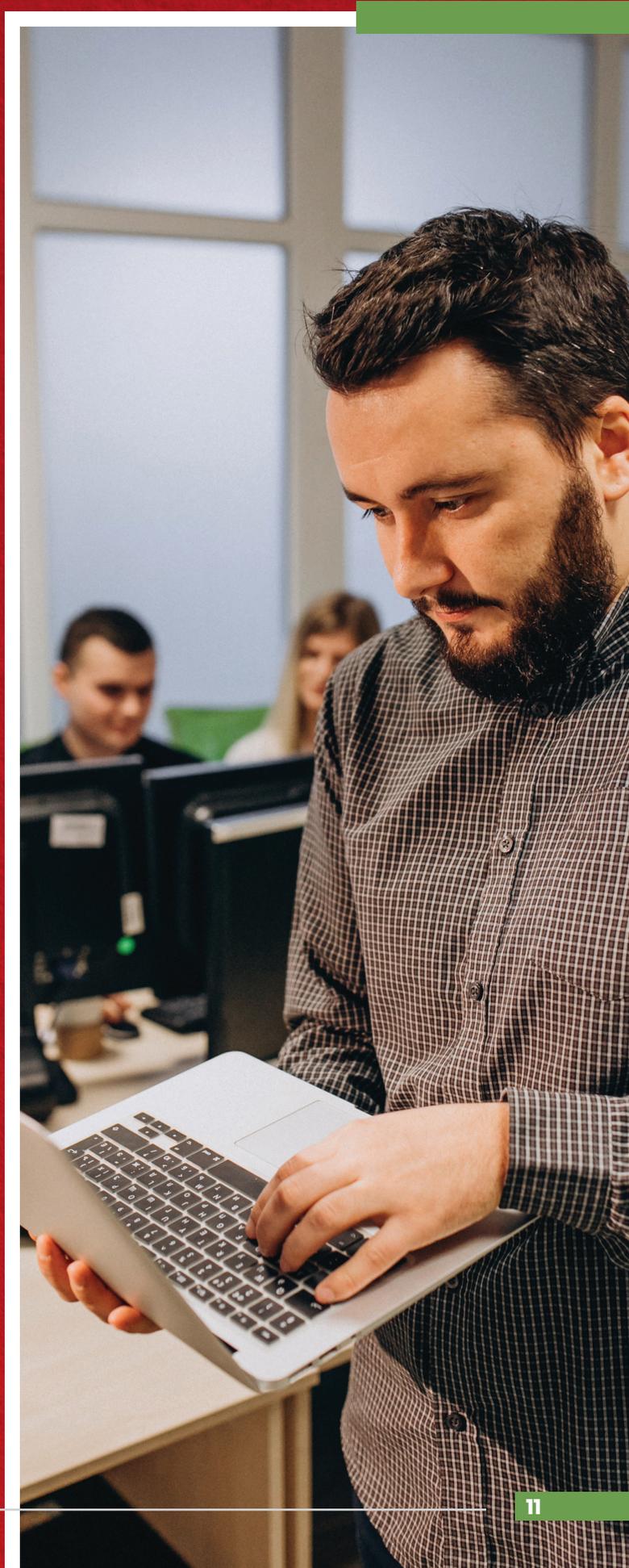
21. Automate the Process

Not every aspect of a contract should be left to a computer. However, an online system can reduce human error by keeping and managing the following:

- A contract portfolio
- Contract deadlines
- Main milestones
- Measurable progress

22. Include a Pre-Suit Mediation Requirement

Although implementing all of the above can help you avoid contractual disputes, sometimes they are bound to happen. That's why it's important to include a pre-suit mediation requirement in your contracts. A pre-suit mediation clause is a provision in a contract that requires the parties to mediate a dispute as a condition precedent to filing a lawsuit. Such a provision has been effective in avoiding the majority of lawsuit where it has been implemented.





Finances

During a lawsuit, your business takes a huge financial hit. Even if you don't end up owing damages, you still pay for court fees and your lawyer's time — not to mention the cost of the time you're losing while dealing with the lawsuit instead of working on your business. Here's how you can avoid such a loss:

23. Have a Separate Legal Entity

If your business is a sole proprietorship, your personal assets may be at risk if your business gets sued. You can avoid this risk either by having a trust own your business or separating your business and personal finances in some other way. You should also consider establishing your business as a limited liability company. As the name suggests, an LLC limits liability to the business structure itself where the owners are immune from personal liability for the company's debts or liabilities. That is why Limited liability companies are the most popular business types for small business owners. In essence, it is a hybrid entity that combines the characteristics of a corporation with those of a partnership or sole proprietorship.



24. Asset Protection

It's best not to keep more cash in your business than what is necessary to run day-to-day operations. If your business loses a lawsuit, the winner can easily go after that cash. By then, it will be too late to move it around. While keeping low cash reserves is a good frontline defense tactic, the best strategy is to adopt a solid asset protection plan.



25. Take Advantage of Exemptions

Although it's different for every state, [certain assets are considered exempt](#). They may include retirement accounts, insurance products, or parts of your homestead. One strategy to avoid financial damage from a lawsuit is to invest more of your business's cash in these assets.

Insurance

To safeguard your business and reduce the financial impact of a potential lawsuit, you need to be aware of the [kinds of insurance coverage](#) your business needs. Here are several steps you can take to ensure your business is adequately protected from lawsuits.

26. Purchase a Business Insurance Policy

While larger companies may want to either purchase a commercial package policy or customize their policies based on their specific risks, many small- to mid-sized businesses opt for a [business owner's policy](#) also called general liability insurance. These packages offered by insurance companies typically include:

- ❑ Property insurance for all business-owned buildings and real estate, as well as their contents
- ❑ Business interruption insurance, which covers income loss due to catastrophes such as fires
- ❑ Liability protection, which covers others' claims related to bodily injury, personal injury, property damage, and advertising injury.

In the event of a lawsuit, many plans will also cover attorneys fees in their liability coverage for defending against a lawsuit. It's always a good idea to talk to your insurance broker to see what liability policy is best for you.

27. Consider Getting Specialized Liability Insurance

For many businesses, specialized insurance coverage is worth looking into. One popular option is [professional liability insurance](#), also referred to as errors and omissions insurance or malpractice insurance. This helps protect your business against claims and potential liability related to any mistakes employees may make in their professional services.

For example, if a client loses money after taking the financial advice of one of your employees and decides to sue you for negligence, this coverage helps pay the associated legal fees.



28. Add Umbrella Insurance to Your Policies

Getting commercial umbrella insurance is a safe bet for business owners. As its name implies, this type of insurance covers what your regular policy doesn't. Therefore, if a claim goes beyond the limits on your current policy, umbrella insurance may cover the difference. This additional layer of protection typically covers:

- Legal costs
- Settlements and judgments
- Medical bills
- Damage to other properties

29. Report Early

In the case that you do have a claim, it's important to report it to your insurance as promptly as possible. Reporting early can help your claim get resolved quickly, and it can also help you avoid lengthy and costly legal entanglements.

Moreover, make sure you keep all relevant records and evidence safe. This kind of proof can make or break your case.

The Takeaway

It's every business owner's responsibility to minimize your business's risk of lawsuits — but you don't have to go it alone. These 29 advanced litigation avoidance techniques can get you going in the right direction, and professional advice from a business attorney can keep you on track. Being proactive will help you stop legal headaches before they start, and [Cueto Law Group](#) is here to help.

To learn more about how we can help you safeguard your business,

CONTACT US TODAY



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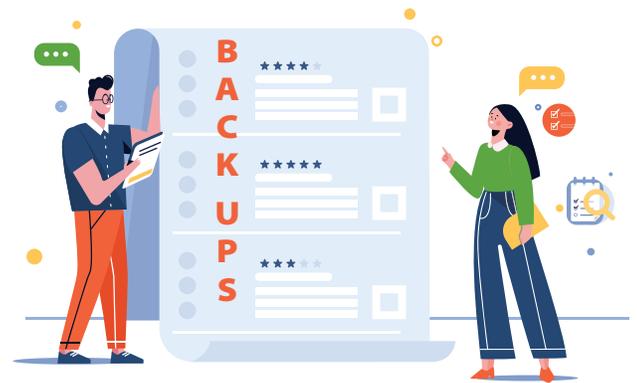
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