
MISTAKES BUSINESS OWNERS AND EMPLOYERS CANNOT AFFORD TO MAKE

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*Nothing in this presentation is meant as a legal advice but for general educational purposes only.

WHY EVERY BUSINESS NEEDS A PROPER PARTNERSHIP AGREEMENT

“A handshake is not a strategy
– and verbal trust is not a legal
plan.”

What we mean by “Partnership”

- Two or more people running a business together, with or without forming an entity
- Co-owners of an LLC (Operating Agreement)
- Shareholders in a corporation (Shareholders’ Agreement)
- Even informal collaborations that involve shared profits, losses, and decisions

If you’re sharing money, effort, or control – congratulations! You’re in a partnership, whether you wrote it down or not.



WHY HANDSHAKE DEALS GO WRONG

Most small business partners start with good intentions. They trust each other, they're excited, and the future looks bright.

But here's what typically happens:

- One partner works harder than the other. “I’m carrying the business while they’re on vacation.”
- Money becomes an issue. “Why are they taking distributions when we need cash for growth?”
- Vision drifts. “I thought we were building to sell – they want a lifestyle business.”
- Life happens. One partner gets sick, moves, divorces, or just burns out.

When these things aren't addressed in writing, the fallout can be brutal — emotionally and financially.

WHAT A STRONG AGREEMENT COVERS

- Roles & Responsibilities: Who does what, and how performance is measured.
 - Decision-Making: How major business decisions are made and what requires unanimous consent.
 - Ownership & Capital: Who owns what, how additional capital is contributed, and what happens if someone doesn't pay their share.
 - Profits & Distributions: When and how money is taken out.
 - Exit Strategy: Buy-out rights, valuation methods, and what happens if someone wants to leave.
 - Death, Disability, Divorce: Contingency planning so personal life events don't sink the business.
 - Dispute Resolution: Mediation, arbitration, or court — and where.
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CLARIFYING ROLES – EMPLOYEE V. CO-OWNER

- Not having a partnership agreement means blurring the lines whether an individual is a partner or an employee, creating very expensive litigation.
 - If employee – various Labor Codes apply, including:
 - Unpaid Wages
 - Wage Statement violation
 - Meal Penalties
 - Rest Break Penalties
 - Sick Pay
 - Vacation Pay (if chosen to provide)
 - Worker's Compensation, leave under FMLA/CFRA/Pregnancy Disability
 - Rights under Fair Employment Housing Act
 - If partner/co-owner – they are no longer employee therefore very limited relief provided, such as partnership dispute, not employment claims.



MISCLASSIFICATION – CLASS ACTION LAWSUIT

- If employee, they can bring a representative lawsuit on behalf of former and current employees for various Labor Code violations:
 - **Class Action** is a representative suits that resolves claims of a large group of similarly situated individuals. Class Action cases go back **4 years** from the date of the Complaint filed.
 - CA courts have certified as little as 10-30 members for a class action case, so smaller employers are not immune to Class Actions.
 - **Class Action** suits involve the following types of violations:
 - Unpaid Wages (overtime, regular rate of pay, commissions, bonuses)
 - Meal Break Violations
 - Rest Break Violations
 - Expense Reimbursement
 - Wage Statement Violations
 - Improper calculation of Paid Sick Leave
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MISCLASSIFICATION – P.A.G.A. LAWSUIT

- **Private Attorney General Act ("PAGA")** was enacted to help the Labor & Workforce Development Agency to enforce CA's labor laws. It allows employees to sue for any Labor Code violation on behalf of the state.
 - PAGA lawsuits have caused employers in CA **billions of dollars** since its enactment in 2004.
 - PAGA lawsuits go back 1 year, which means as an employer, if you are not compliant with California/Federal/local labor laws, you can potentially be sued every year.
 - On average, there are 75 PAGA letters filed with the LWDA **every day!**
 - **This means that there are 75 employers in California that get notified of a PAGA filing on a daily basis.**
 - Even though a reform was passed in 2024 to limit the filings, it has had the opposite effect, increasing the number of filings.
 - The only defense to PAGA claims is compliance.
 - What makes this very expensive for employers is the Statutory Attorney's Fees for both Class Action and PAGA cases. Employer ends up paying both for their own attorney's fees PLUS employee's attorney's fees.
 - Very important to have a proper partnership agreement!
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COMMINGLING FUNDS – THE SILENT BUSINESS KILLER

“Your business is not your personal piggy bank

Commingling means blurring the line between personal and business money. It's one of the most common – and most dangerous – mistakes business owners make.

Examples include:

- Paying your mortgage or kid's tuition out of the company account.
- Using a single credit card for groceries, gas, and client dinners.
- Depositing client checks into your personal account.
- Treating business money as your “ATM” and promising to settle up later.

You may think, “It's my company – what's the difference?” The difference is legal protection.

WHY IT'S SUCH A BIG PROBLEM

- Commingling doesn't just create messy books — it destroys your liability shield.
- The entire purpose of forming an LLC or corporation is to separate you from the business.
- If you ignore that separation, a court can ignore it too.
- This is what's known as “piercing the corporate veil.”

WHAT IS PIERCING THE CORPORATE VEIL?

When a court “pierces the veil,” it decides the company is not a truly separate entity — just an alter ego of its owner.

That means the owner becomes personally responsible for the company’s debts, contracts, and lawsuits.

Courts look at factors such as:

- Were business and personal funds mixed together?
- Were corporate formalities followed — like separate bank accounts, proper record-keeping, and signed contracts in the company’s name?
- Was the company properly capitalized (i.e., did it have enough money to function as a real business)?
- Did the owner treat company funds like personal money?

If the answer to those questions is “yes,” the court can say: “You treated the business as you — so now the law will too.”

COMINGLING OF FUNDS FROM EMPLOYMENT LAW PERSPECTIVE

- Class Action/PAGA lawsuits involving wage/hour violations (i.e., unpaid wages, etc.) have personal liability for the employer.
 - Under CA law, not paying your employees their full wages is considered a crime - "wage theft"
 - Employer is personally liable for their employees' unpaid wages, which include meal penalties, wage statement violations, etc.
 - Directors/officers/shareholders of the company are personally liable for wage/hour claims
 - There is no need to pierce the corporate veil as there is personal liability.
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CORPORATE LIABILITY – COMINGLING OF FUNDS

- In Class Action/PAGA representative cases involving wage/hour claims, due to the expensive nature of the litigation and the settlement, often the employer's tax records are reviewed for any argument of "inability to pay"
 - The judge may need to review the tax filings, financial records of the company and the owner if the employer claims it cannot pay the hefty settlement due to financial restrictions.
 - Opposing counsel will do their due diligence in finding employer's assets, both personal and business.
 - Tax records that are comingled can create issues if it needs to be submitted to the court for review.
 - If the tax records show combining personal and business expenses, it can create civil and criminal implications and cannot be used at the time settlement negotiations.
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CLIENT & CONTRACTOR AGREEMENTS — YOUR FIRST LINE OF DEFENSE

“Good contracts don’t just prevent problems — they prevent surprises.”

Why Contracts Matter

Every business relationship starts with optimism — but optimism isn’t a legal strategy.

A well-written agreement defines the rules of engagement:

- What exactly each side is responsible for.
- When and how money changes hands.
- What happens if something goes wrong.

Without clear contracts, you’re relying on memory, assumptions, and text messages — none of which hold up well in court.

TWO SIDES OF THE SAME COIN

There are two key categories here. Both need to be crystal clear — but the priorities are different:

Client Agreements: You use these when you are providing goods or services. Client contracts should protect your payment, scope, and intellectual property.

Contractor Agreements: You use these when someone else is providing goods or services to you. Contractor contracts should protect your quality standards, deadlines, confidentiality, and ownership of work product.

WHAT STRONG CONTRACTS SHOULD COVER

Scope of Work: Exactly what's included — and what isn't.

Payment Terms: Amount, timing, late fees, and what triggers payment (not “when client feels happy”).

Change Orders: How scope changes will be documented and billed.

Termination: When and how either party can walk away.

Confidentiality & Non-Disclosure: Protects proprietary information and trade secrets.

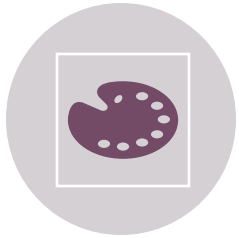
Intellectual Property: Clarifies ownership of deliverables, designs, or inventions.

Indemnification: Allocates who pays if a third party sues.

Dispute Resolution: Whether issues go to mediation, arbitration, or court — and where.

INDUSTRY CUSTOMIZATION IS CRITICAL

There is no such thing as a one-size-fits all contract. Every industry has its own quirks and risks.



CREATIVE FIELDS:
FOCUS ON COPYRIGHT
AND USAGE RIGHTS.



TECH AND STARTUPS:
EMPHASIZE IP
ASSIGNMENT AND
CONFIDENTIALITY.



CONSTRUCTION:
DEFINE TIMELINES,
CHANGE ORDERS, AND
INSURANCE
REQUIREMENTS.



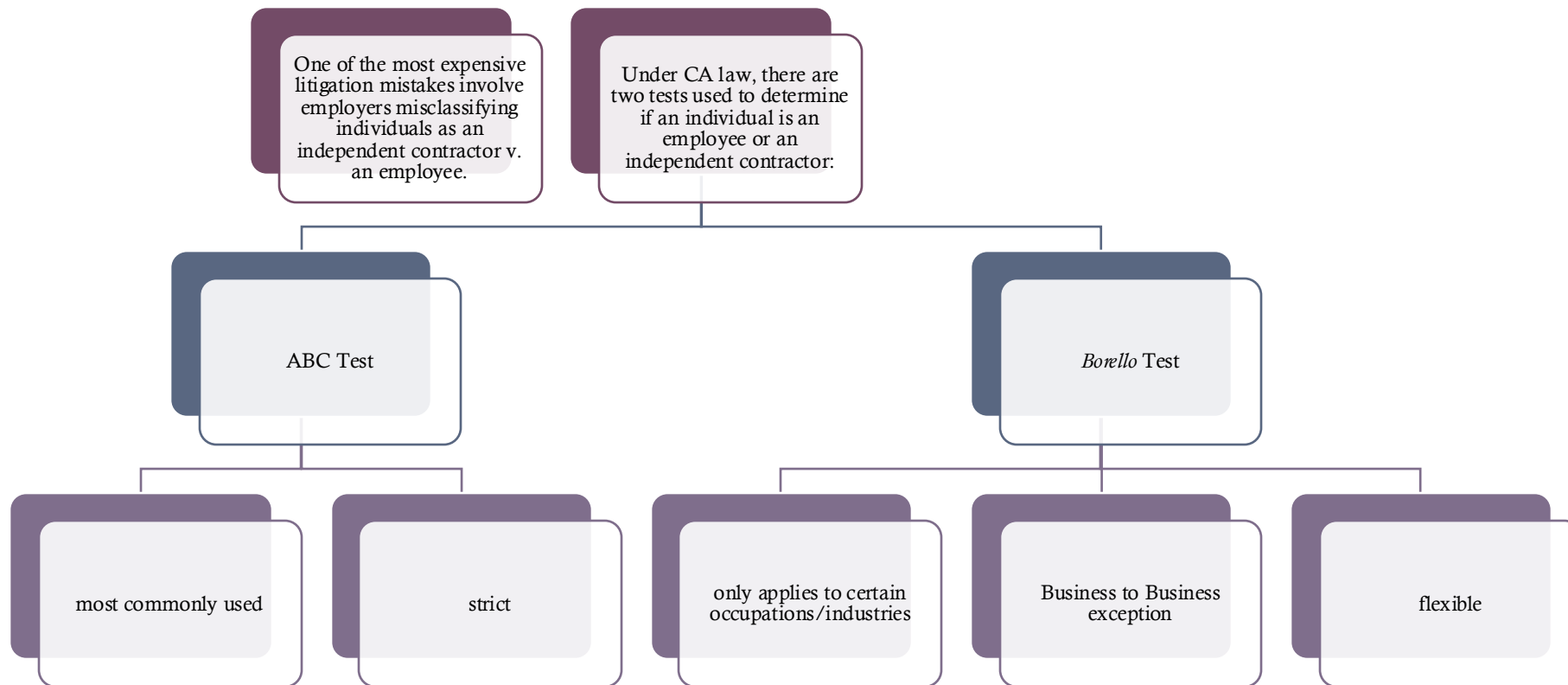
**CONSULTING OR LEGAL
SERVICES:** INCLUDE
SCOPE LIMITATIONS
AND NON-RELIANCE
DISCLAIMERS.



**PRODUCT OR
MANUFACTURING:**
COVER SPECIFICATIONS,
WARRANTIES, AND
INDEMNITIES.

A good contract speaks the language of your industry – not just legalese.

INDEPENDENT CONTRACTOR V. EMPLOYEE



ABC TEST – EMPLOYEE V. INDEPENDENT CONTRACTOR

- **ABC Test** – presumption is all workers are employees, unless meet all three requirements:
 - The worker is free from the control & direction of hiring entity
 - Work performed is outside the usual course of the hiring entity's business
 - **AND**
 - Worker is customarily engaged in an independently established trade, occupations, or business of the same nature as that involved in the work performed
- *Burden is on the company to establish ALL of these elements.
- If it is determined that the individual misclassified, the individual can bring a claim against the employer for various violations for misclassification, including:
 - Unpaid wages (including overtime)
 - Paid Sick Leave
 - Meal Break and Rest Break Penalties
 - Wage Statement Violation
 - Statutory Attorney's Fees
 - Plus all other statutory rights they would be entitled to including FMLA/CFRA/Pregnancy Disability Leave/Worker's Compensation.

CONSEQUENCE OF MISCLASSIFICATION



If the employer has a true independent contractor, there needs to be a clear agreement identifying the role of the contractor, the anticipated projects, as well as compensation and expectations.



If the individual is an employee, then an employment agreement needs outline the expected role of that employee, compensation and all available benefits, including overtime, meal and rest breaks, paid sick leave, and job protected leave (FMLA/CFRA/Pregnancy Disability leave), as well as worker's compensation.



If it is unclear whether a person is an employee or an independent contractor, the CA Supreme Court has indicated that it will be considered an employee. This is why it is critical to have proper designation and an agreement from the outset.



The consequence of misclassifying an employee can trigger both an individual suit and a Class Action/PAGA suit. Both the individual and Class Action can go back to 4 years of unpaid wages, meal/rest breaks, etc. Plus statutory attorney's fees.

BUSINESS INSURANCE — YOUR LEGAL SAFETY NET

“You can’t predict every storm
— but you can prepare for it.”

Most business owners think of insurance as a chore — something they’ll “get to later.”

But from a legal perspective, insurance is one of the most important layers of protection you can have.

Because even when you’ve done everything right — the right contracts, the right entity, the right partners — things still go wrong.

And when they do, it’s not about who’s right or wrong at first — it’s about who can afford to defend themselves.

THE LEGAL ROLE OF INSURANCE

In other words, insurance is the first shield that steps in before your personal or business assets are ever touched.

Provides a legal defense. Your insurer hires and pays the lawyers if you're sued.

Covers settlements and judgments. So a lawsuit doesn't wipe you out.

Protects your business continuity. One claim shouldn't close your doors.

Shows responsibility to clients, investors, and regulators.

CORE TYPES OF BUSINESS INSURANCE

General Liability Insurance:

Covers accidents, property damage, and bodily injury claims.

Example: someone slips on your premises.

Professional Liability (Errors & Omissions):

Covers mistake in your professional services or advice

Example: you give faulty business advice that causes a client loss.

Workers' Compensation:

Required in most states Covers employee injuries on the job.

Commercial Property Insurance:

Protects your office, equipment, and inventory from fire, theft, or damage.

Cyber Liability:

Covers data breaches, ransomware, and digital threats – now critical in almost every industry.

Directors & Officers (D&O):

Protects leadership against claims of mismanagement, fiduciary breaches, or board-level disputes.

EMPLOYMENT INSURANCE - EPLI

Employment Practice Liability Insurance (EPLI)

Provides insurance for claims filed by current, former and prospective employees against employers for illegal acts such as discrimination, harassment, retaliation, wrongful termination, etc.

EPLI helps cover legal expenses, including attorney's fees, settlements and damages related to employment practice lawsuit.

Wage/Hour lawsuits (those involving claims for unpaid wages (overtime/regular rate of pay/bonus/commissions) as well as meal and rest breaks, paid sick leave, etc., including Class Action/PAGA lawsuits involving wage/hour are usually not covered under the typical EPLI policy unless the employer requests "cost of defense" coverage.

EPLI POLICY – LIMITATIONS OF COVERAGE

- It is imperative to understand that even if you have an EPLI policy that includes wage/hour component to the policy, it does NOT cover the actual settlement/judgement of the wage/hour case and it does NOT cover the attorney's fees for opposing side.
 - It only covers the cost of defense – meaning the litigation cost of defending wage/hour suit, including Class Action and PAGA suits.
 - It has a very high deductible often, such as a \$100,000 retention policy.
 - This means the employer does not get the benefit of the insurance until it spends \$100,000 out of pocket first in defending the suit. Even then, the employer still has to pay the settlement amount/verdict out of pocket.
 - The policy also limits how much in attorney's fees it would cover (maximum coverage allowed).
 - Compliance with CA/Federal/Local labor laws is the employer's only defense in wage/hour claims.
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REAL LIFE EXAMPLES OF CLASS ACTION/PAGA SETTLEMENTS



Class Action and PAGA claims are the most expensive claims for employers to defend and settle.



Class and PAGA claims are valued based on number of violations and the workweeks employees worked within the class period.

Class period begins to run from the date the complaint is filed going back 4 years.



On average, depending on the size of the class members and workweeks, these cases settle anywhere from \$300,000 to multi-million dollars, not including defense fees.



Most cases settle through mediation as it is the least expensive method for employers.



Defending in court through class certification/trial can run over \$1million. Most insurance companies do not want to litigate these cases due to the litigation cost.

CLEAN CORPORATE BOOKS – THE KEY TO A SELLABLE COMPANY

“If your books are a mess,
your business is worth less.”

Most owners think bookkeeping and corporate records are about taxes.

They're not. They're about credibility, value, and control.

When your financial and corporate records are clean, you:

Make better decisions

Protect yourself legally

Build trust with investors, banks, and buyers.

When your records are sloppy, you:

Invite audits and disputes

Lose negotiating leverage in a sale

Send the message that your company is run on instinct, not insight.

WHAT “CLEAN” REALLY MEANS



Keeping clean books and records means:

- Accurate, up-to-date financial statements.
- Separate accounts for each entity.
- Documented ownership and stock or membership interests.
- Signed contracts and board approvals for major transactions.
- Proper tax filings and licenses in every jurisdiction.
- Consistent record-keeping — no missing minutes, unsigned documents, or unrecorded loans.

Buyers and investors will look for paper (or digital proof) of every major decision and dollar.

THE VALUATION CONNECTION

Clean records don't just make you look good — they make you worth more.

When financials are clear and governance is documented:

- Buyers trust your numbers.
- Deals close faster.
- Lawyers and accountants spend less time (and money) cleaning up.
- You can justify a higher multiple because the risk discount disappears.

A company with strong records feels institutional — and that's what investors pay for.



PAYROLL & HUMAN RESOURCES RECORDKEEPING

- In CA, employers are required to keep their employees' payroll and timecards going back 4 years at the very least.
 - I advise my clients to keep time/pay records for at least 5 years in case there is a wage/hour suit.
 - Employers are to provide their employees with their time and pay records within 21 days of employee requesting them or pay a civil penalty of \$750. (Labor Code Sec. 226(b).
 - Relying on payroll company to maintain time/pay records is not an excuse.
 - Oftentimes payroll companies delete records without properly notifying the employer.





RECORDKEEPING - PERSONNEL RECORDS

- Employers are required to keep accurate personnel records for each employee, including:
 - I-9 form
 - employment agreements
 - any reprimands, performance improvement plans, or write-ups/complaints
 - Investigation report(s) regarding allegations of complaints,
 - termination letter.
- FMLA/CFRA leave – documentation as to when they take their leave (12-weeks)
 - This includes intermittent leave – need to keep accurate documentation of their entitled 12-week leave
- Pregnancy disability leave – documentation regarding protected leave, when the employee intends to return to work and any documentation from their medical provider regarding ability to return to work.
- Work accommodation/restrictions from employee's medical provider
 - Whether it is a worker's compensation doctor putting work restrictions or a private doctor advising the limitations during employee's employment, all communications regarding work restrictions and accommodations need to be properly documented.
 - There have been many lawsuits regarding "failure to conduct interactive process" and "failure to accommodate medical restrictions" - without proper documentation these become extremely difficult to defend.

Almost every case dealing with harassment/retaliation/wrongful termination comes down to proper documentation.

- Employers are to produce personnel records within 30 days of request by their employee.

LAST BUT CERTAINLY NOT LEAST – EMPLOYEE HANDBOOKS

- Employment Handbooks –
 - It is absolutely critical to have an up-to-date Employee Handbook for your employees.
 - Employee Handbook identifies not only what your employees' rights are under CA law but also:
 - Where to report complaints to,
 - What the investigation process/protocol is at the company,
 - When you process payroll,
 - Meal/Rest Breaks,
 - Rights to take protected leave,
 - Worker's Compensation,
 - Putting employees on notice about what the company policies are in general and grounds for discipline and termination.
- ** Putting your employees on notice regarding their rights will go a long way in defending you the employer in these suits.**



QUESTIONS ABOUT BUSINESS FORMATION/DISSOLUTION, CONTACT:

Contact Natela Shenon at NShenon@GrantShenon.Com Phone: 818-827-5156

QUESTIONS ABOUT EMPLOYMENT MATTERS/WAGE & HOUR/EMPLOYEE HANDBOOK/TRAINING:

Contact Luiza Manuelian at Luiza@Landeggeresq.com Phone: 818-986-7561 Ex. 101

THANK YOU!
