

## **GUIDE FOR NEW BUSINESSES**

*Getting started after a business plan is in place.<sup>1</sup>*

Prepared by Alexander, Van Loon, Sloan, Levens & Favre, PLLC (AVL)

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<sup>1</sup> A business plan is an essential roadmap for business success. A business plan is a dynamic document that outlines the route the Company plans to take to grow revenues. A successful business plan will consider the Company's business industry, market, and competitors among other things. The U.S. Small Business Administration provides resources to assist in developing a business plan.

## FOREWORD

Information is power. Information can increase the quality of our business and personal lives, create new productive environments, assist us in getting beyond problems that trouble us, and help us realize our dreams. Information can be one of the most important resources for a new business.

The accompanying pages are meant to provide you with the information that your business needs to get started and stay on the right track. Starting a new business can be a challenging and sometimes difficult road but it is often said that nothing worth doing is easy. Steadfast and informed perseverance can lead to positive and rewarding results.

This guide has been broken down into various business topics to help you focus on one task at a time until you are able to address all topics. As you read through this guide, we urge you not to become overwhelmed at the magnitude of information that a business owner needs to know in order to start a new business. Rather, we encourage you to take one small step at a time as you work towards your goal.

Your AVL advisory team is here to assist you with part of or all of your journey and we are pleased to be able to provide you with this business tool.

Sincerely,  
Alexander, Van Loon, Sloan, Levens & Favre, PLLC  
Certified Public Accountants

*“It always seems impossible until it’s done.” – Nelson Mandela*



**Alexander, Van Loon, Sloan, Levens & Favre, PLLC**  
**Certified Public Accountants and Business Consultants**  
**228.863.0411**

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## **DETERMINING THE LEGAL STRUCTURE OF YOUR BUSINESS**

A business can operate under the following legal structures:

- C-Corporation (*Separate legal entity from the owner*)
- S-Corporation (*Separate legal entity from the owner*)
- Partnership (*Separate legal entity from the owner*)
- Limited Liability Company (*Separate legal entity from the owner*)
- Sole Proprietorship (*Same entity as the owner*)

### **C-Corporation**

- Files its own tax return separate from the owner (shareholder).
- Articles of incorporation are required for formation. (An attorney will assist with the formation documents.)
- Unlimited number of shareholders is allowed.
- Minutes documenting all business decisions should be maintained and shareholder meetings should be held at least annually.
- Shareholder liability is limited to investment except for personal services.
- Operating losses are not passed through to the shareholders.
- Income may be double taxed to both the corporation and shareholders when dividends are paid.
- C-corporation pays franchise tax to the State of Mississippi.
- Can have a fiscal year end different from a calendar year.
- Must be treated as a separate legal entity with no comingling of business expenses with personal expenses to preserve the liability protection and protect the individual owner(s) from liability exposure.

### **S-Corporation**

- Election to be treated as an S-corporation must be filed with the IRS no later than the 15<sup>th</sup> day of the third month of the tax year that the election is to apply.
- Files its own tax return separate from the owner (shareholder).
- Articles of incorporation are required for formation. (An attorney will assist with the formation documents.)
- Up to 100 shareholders are allowed. (Shareholders cannot be corporations, partnerships, LLCs, or LLPs)
- Only one class of stock is allowed.
- Minutes documenting all business decisions should be maintained and shareholder meetings should be held at least annually.
- Shareholder liability is limited to investment except for personal services.

## **DETERMINING THE LEGAL STRUCTURE OF YOUR BUSINESS (Continued)**

### **S-Corporation (Continued)**

- Income and losses are passed through to the shareholders for tax purposes. (Losses can only be deducted to the extent of shareholder's basis in the Company.)
- S-Corporation pays franchise tax to the State of Mississippi.
- After paying working owners a reasonable salary commensurate with the duties performed, income distributed to the working owners is not subject to Social Security and Medicare tax.
- Must be treated as a separate legal entity with no comingling of business expenses with personal expenses to preserve the liability protection and protect the individual owner(s) from liability exposure.

### **Partnership and Limited Liability Partnership**

- Files its own tax return separate from the owner (partner).
- Partnership agreement is recommended. (An attorney will assist with the formation documents.)
- Unlimited number of partners is allowed.
- Partner liability is limited to investment except for the general partner(s) who assumes additional liability.
- Income and losses are passed through to the partners for tax purposes.

### **Limited Liability Companies**

- Generally, a single member LLC's income is taxed on a schedule C or E in the member's personal tax return.
- Multiple member LLC's income is reported on a separate return as a partnership, S-corporation, or C-corporation depending upon Member election.
- Articles of Organization are required. (An attorney will assist with the formation documents.)
- Unlimited number of members is allowed if taxed as a partnership. If taxed as an S-corporation, up to 100 members are allowed.
- Member liability is limited to investment except for personal services.
- Income and losses are passed through to the members for tax purposes.
- Must be treated as a separate legal entity with no comingling of business expenses with personal expenses to preserve the limited liability protection and protect the individual owner(s) from liability exposure.

## **DETERMINING THE LEGAL STRUCTURE OF YOUR BUSINESS (Continued)**

### **Sole Proprietorship**

- One owner
- Taxed as part of the owner's personal tax return
- Unlimited personal liability exposure

## **REQUIRED FILINGS WITH THE MISSISSIPPI SECRETARY OF STATE**

The Mississippi Secretary of State's office utilizes an online filing system for all required filings. The website address is [www.sos.ms.gov](http://www.sos.ms.gov).

The following formation/reporting documents must be completed on-line.

- Form a Mississippi corporation, LLC or partnership.
- Reserve a business name.
- File an annual report for corporations and LLCs (MS Form F0008 and F0108). (Partnerships are not required to file an annual report.)

In most instances, an attorney of your choosing will prepare and file your formation documents for you.

It is the corporation's or LLC's responsibility to file the annual reports. Corporation and LLC annual reports are due by April 15th each year.

## **TAX IDENTIFICATION NUMBER**

All legal business entities are required to apply for an employer identification number (EIN) through the Internal Revenue Service for the purpose of tax administration.

An EIN can be obtained by applying online at [www.irs.gov](http://www.irs.gov) (IRS Form SS-4). This process is a simple one and you will be assigned an EIN upon completion of all required fields of entry.

## **OBTAIN BUSINESS LICENSES AND PERMITS**

Each city and/or county in Mississippi has its own licensing and permitting requirements. It is up to the company to contact the city and/or county the company is located in to determine applicable licensing and permitting requirements and take the necessary steps to comply.

Companies that do business in other states are generally required to obtain licenses/permits to do business in those states. The requirements vary by state.



## SET UP AN ACCOUNTING SYSTEM

Good financial information is a necessary component of a successful business. A timely financial statement provides a snapshot of your business's health. It is also a powerful diagnostic tool that business owners can use to evaluate their company's strengths and weaknesses and to chart the way forward. Reliable financial information starts with a good system of capturing cash receipts, cash disbursements as well as income and expense transactions. The following items should be considered when setting up an accounting system:

- A separate cash account should be set up in the company's name and EIN and should be used exclusively for the business.
- As the company grows, an imprest bank account can be set up for payroll transactions to minimize exposure to the company's operating cash account.
- An accounting software package such as QuickBooks should be purchased for the purpose of recording and categorizing all cash transactions and reconciling the cash account monthly (i.e., bookkeeping). (AVL can assist you or your bookkeeper with setting up QuickBooks and train you on how to properly enter the transactions. Another alternative is to have AVL provide these bookkeeping services for you on an outsourced basis.)
- An accounting software package such as QuickBooks can also be used to generate checks, prepare customer billings, track outstanding accounts payable, track inventory, prepare budgets, process payroll, and integrate with a point of sale system.
- A vendor filing system should be established to properly file and maintain all vendor invoices received and paid.
- A capitalization policy should be established and followed by the company. The purpose of a capitalization policy is to establish guidelines for the accounting and management of company-owned tangible property (furniture, fixtures, equipment, etc.) as they relate to acquisition, maintenance, and sale or other final dispositions of such property. An inventory of furniture, fixtures, equipment, and other fixed assets should be maintained that includes the date of purchase.
- Company records should be maintained for a minimum of 4 years with the exception of real estate, securities, and individual retirement account records which should be maintained indefinitely or until the asset is sold or distributed. Records supporting taxable carryovers/carrybacks should be maintained until the deductions no longer have an effect, plus seven years, according to IRS instructions.

## **ESTABLISH AN INTERNAL CONTROL SYSTEM (*Checks and Balances*)**

Unless the company is operated solely by the owner manager, it is never too early to establish good internal controls. The purpose of good internal controls is to minimize opportunity points thereby safeguarding company assets. (*An opportunity point is any event/task within a transaction process where an error [unintentional or intentional (Fraud)] can occur.*) If undetected and uncorrected, the error can result in financial loss to the Company. Even the most trusted employee may contemplate stealing from their employer if faced with enough financial pressure and given the opportunity.

The following controls that **prevent** fraud can be implemented:

- Employees who receive cash from customers should not have the ability to post cash to customer accounts.
- Employees should not have the ability to independently generate and sign checks or authorize wire transfers and electronic payments from company cash accounts.
- Dual signatures can be required on all checks, if possible, or owners should have sole signature authority.
- A signature stamp should not be used to sign checks. If signature plates are used to sign checks, the employee responsible for generating the check should not have access to the signature plates.
- Check signers should be independent of the accounts payable function and check signers should review supporting invoices for proper authorization and approval.
- Owner/managers should authorize all new vendors to prevent an employee from setting up a fictitious vendor. Vendor lists should be periodically reviewed.
- Credit card limits should be kept to a minimum and all credit card transactions should be supported by receipt and should be properly approved by owner/manager before payment is made.
- Bank accounts should be reconciled within two weeks of receiving the bank statement.
- Payroll transactions should be reviewed and approved by a person independent from payroll processing to ensure that all paid employees are legitimate and are paid the authorized amount.

The following controls that **detect** fraud can be implemented:

- Daily customer receipts should be reconciled to payments posted to customer accounts by someone other than the employee responsible for payment collection.
- Credits to customer accounts should be reviewed and unauthorized credits researched.
- Cash register tapes should be reconciled with the daily deposit.
- Owner/manager should directly receive unopened bank statements and the bank statements should be reviewed for unusual or unauthorized transactions. (Consider having the bank statement and other financial documents mailed to owner/manager's home.)
- Bank reconciliations should be reviewed by owner/manager and unusual reconciling items should be researched.
- Employees should be required to take annual vacations and their duties should be performed by others in their absence. (Do not let the employee's work stack up until their return.)

### **ESTABLISH AN INTERNAL CONTROL SYSTEM (Continued)**

- Monthly financial statements should be reviewed and unusual account balances investigated.
- Compare established budgets to actual results and investigate unusual differences.

The above controls are not all-inclusive. As the Company grows and positions are added additional controls can be implemented. AVL can assist the Company in assessing its internal control structure and identify changes/controls that need to be implemented.

## **FEDERAL, STATE AND LOCAL TAXES**

### **Sales Tax**

All sales of personal property (*defined as any asset other than real estate; movable in nature*) in the State of Mississippi are subject to the regular retail tax of 7% unless the law exempts the item or provides a reduced rate of tax for an item. In some cases, services rendered in connection with the sale of personal property are also subject to sales tax. (Sales tax rules can be found at <https://www.dor.ms.gov/taxareas/sales/main.html>.)

Before engaging in any business in Mississippi subject to sales tax, a permit or registration license is required from the Mississippi Department of Revenue (DOR). (A separate permit is required for each location.)

Online registration is completed at the Mississippi Department of Revenue website [www.dor.ms.gov](http://www.dor.ms.gov).

The Mississippi Department of Revenue will set the Company's filing period (monthly, quarterly, etc.). Sales tax is due by the 20<sup>th</sup> of the month following the last month of the reporting period. Sales tax is filed online through Taxpayer Access Point – Mississippi (TAP) at [www.dor.ms.gov/taxareas/sales/main.html](http://www.dor.ms.gov/taxareas/sales/main.html).

Companies required to collect sales tax as a part of each sale are considered to have collected the sales tax on behalf of the State of Mississippi and this money is considered collected in trust. It is very important that all sales tax collected be set aside and remitted to the Mississippi Department of Revenue with the filing of the sales tax returns by the filing due date in order to avoid penalties.

Other local taxes such as lodging taxes or taxes on prepared food may apply to certain business activities in certain cities or counties.

### **Use Tax**

Use tax applies to personal property (*defined as any asset other than real estate; movable in nature*) acquired in any manner for use, storage, or consumption within Mississippi for which sales or use tax has not been paid to another state at a rate equal to the applicable Mississippi rate (7%).

Use tax rates are the same as those applicable to sales tax. The basis for computation of the tax is the purchase price or value of the property at the time imported into Mississippi, including any additional charges for deferred payment, installation, service charges, and freight to the point of use within the State.

## **FEDERAL, STATE AND LOCAL TAXES (Continued)**

### **Use Tax (Continued)**

The Mississippi Department of Revenue will set the company's filing period (monthly, quarterly, etc.). Use tax is due by the 20<sup>th</sup> of the month following the last month of the reporting period. Use tax is filed online through Taxpayer Access Point – Mississippi (TAP) at [www.dor.ms.gov/taxareas/sales/main.html](http://www.dor.ms.gov/taxareas/sales/main.html).

### **Rental Tax**

Short term rentals are subject to sales tax. Rates vary based on type of rental activity and can be obtained from the Mississippi Department of Revenue.

### **Real Property Tax**

Real property (land and buildings) owned by a business is considered Class II property and is subject to ad valorem tax at a rate of 15% of the true value of the property. Real property taxes are due on or before February 1<sup>st</sup> for property assessed the preceding year on January 1<sup>st</sup>.

### **Personal Property Tax**

Personal property such as inventory, furniture and fixtures, and machinery and equipment used in trade or manufacture are subject to ad valorem taxes imposed by the City and/or County (tax imposed on the ownership or possession of property and is based on the value of the property) annually. Such property is considered Class III property and is subject to 15% tax on the true value of the property.

Personal property taxes are due on or before February 1<sup>st</sup> for property assessed the preceding year on January 1<sup>st</sup>. Each business location must file a separate personal property tax rendition.

A personal property rendition must be completed and returned to the applicable County Tax Assessors' office no later than April 1 of each year. This form can be found online at the State of Mississippi's website at <http://www.dor.ms.gov/taxareas/property/Forms/>. The following information must be provided on the form:

- Inventory as of January 1 or average of the previous 12 months from January 1.
- All furniture and equipment purchased during the previous calendar year including cost.
- All furniture and equipment retired during the previous calendar year including original cost.
- Personal property held by you but owned by someone else (i.e., equipment leased).
- Leasehold improvements.
- Rebuilt or re-manufactured equipment.

## **FEDERAL, STATE AND LOCAL TAXES (Continued)**

### **Personal Property Tax (Continued)**

The personal property rendition must be completed, certified by signature, and submitted to the County Tax Assessors' office by the due date.

An ad valorem tax credit for property taxes paid on inventory can be taken on the Company's state income tax return. This non-refundable credit offsets taxes due up to the annual threshold established by the Mississippi Department of Revenue.

### **Payroll Taxes**

Employers are required to withhold federal, social security, Medicare, and state taxes from employee wages. Taxes withheld from employee wages are considered held in trust and must be set aside and remitted to the Federal and State government by the due date to avoid interest and penalties. Employers are required to match the social security and Medicare tax withheld from employee wages.

- Federal, Social Security, and Medicare taxes withheld from employee wages and the employer Social Security and Medicare match must be remitted electronically using the Electronic Federal Tax Payment System (EFTPS)
  - Federal withholding is based on employee completion of Form W-4
  - Social Security tax is 6.2% of the employee gross wages up to an annual threshold established by the IRS. (Note: the threshold changes annually and can be found at [www.ssa.gov](http://www.ssa.gov).)
  - Federal form 941 which reports taxable wages, federal withholding, and Social Security and Medicare withholdings and match is required to be filed quarterly by the last day of the month following the quarter end.
  - Medicare tax is 1.45% on all taxable wages. An additional .9% is withheld on employee wages over \$200,000. (Note: The additional .9% is not subject to the employer match requirements.)

## **FEDERAL, STATE AND LOCAL TAXES (Continued)**

### **Payroll Taxes (Continued)**

- State taxes withheld from employee wages must be remitted through the Taxpayer Access Point – Mississippi (TAP) at [www.dor.ms.gov/taxareas/sales/main.html](http://www.dor.ms.gov/taxareas/sales/main.html).
  - State withholding is based on employee elections on the Mississippi Employee's Withholding Exemption Certificate (MS Form 89-350).
  - State payroll tax deposits are generally due by the 15th of the month following the month of withholding.
- Federal payroll tax deposit deadlines vary depending on whether the IRS has deemed the Company to be a monthly or semiweekly depositor and on the day of the week that the pay date falls.
  - Monthly filers must deposit employment taxes on wages paid during a month by the 15th of the following month.
  - Semi-weekly filers must deposit employment taxes on wages paid on Wednesday, Thursday, and/or Friday by the following Wednesday and deposit employment taxes on wages paid on Saturday, Sunday, Monday, and/or Tuesday by the following Friday.
  - Internal Revenue Service Publication 15 (Circular E) Employer's Tax Guide provides guidance all payroll requirements.
- Employers are required to pay in federal unemployment tax (FUTA) on the first \$7,000 of each employee's annual wages. The FUTA tax rate is 6%. If employers pay their state unemployment taxes on time, they receive a credit of 5.4% lowering the applicable FUTA tax rate to .6%.
  - FUTA payments must be remitted quarterly by the end of the month following the quarter ended and is remitted electronically using the Electronic Federal Tax Payment System (EFTPS).
  - Federal Form 940 which reports all taxable FUTA wages and taxes paid for the calendar year must be filed by January 31 of the following year.

## **FEDERAL, STATE AND LOCAL TAXES (Continued)**

### **Payroll Taxes (Continued)**

- Employers are required to pay in Mississippi unemployment tax (MUTA) to the Mississippi Department of Employment Security (MDES). Employers are required to pay in a percentage on the first \$14,000 of each employee's annual wages.
  - Employer MUTA rates are assigned by MDES and will vary based on a number of factors including experience rate.
  - Quarterly tax and wage reports and tax remittances are filed online at [www.mdes.ms.gov](http://www.mdes.ms.gov) and must be filed by the end of the month following the quarter end.
- A W-2 must be prepared for each employee annually and the W-2 must be mailed to the employee no later than January 31.
- A copy of all W-2s and a W-3 transmittal form must be submitted to the Social Security Administration and State of Mississippi no later than February 28.
- Form W-3 should reconcile with the 941s for the same period and to salaries reported in the accounting system.

### **Income Tax**

Federal and state income taxes are assessed on the Company's net taxable income. State income taxes are filed with all states that the company has a physical presence in.

- C-corporations pay taxes on corporate taxable income.
  - C-corporation tax returns are due three and one half months after the corporation's year end (i.e., April 15 for a calendar year filer). A five month extension to file is available (i.e., October 15 for a calendar year filer). The Federal income tax rate is 20%.
  - C-corporations are required to estimate their income tax liability for the tax year and pay in estimated taxes according to the following schedule if a calendar year filer:

First payment – April 15

Second payment – June 15

Third payment – September 15

Fourth payment – December 15



## FEDERAL, STATE AND LOCAL TAXES (Continued)

### Income Tax (Continued)

- C-corporations are required to estimate their income tax liability for the tax year and pay in estimated taxes according to the following schedule if a fiscal year filer:

First payment – 15<sup>th</sup> day of the fourth month

Second payment – 15<sup>th</sup> day of the sixth month

Third payment – 15<sup>th</sup> day of the ninth month

Fourth payment – 15<sup>th</sup> day of the twelfth month

- S-Corporations, partnerships, limited liability companies (LLC), and sole proprietorships are taxed at the owner level. The owner may be entitled to a 20% deduction against income depending upon the entity type and the owners taxable income.

- S-Corporation tax returns are due two and one half months after the Corporation's year end (generally March 15). A six month extension to file (generally September 15) is available.

- Partnerships and LLC tax returns are due two and one half months after the Company's year-end (generally March 15). A six month extension (generally September 15) to file is available for Partnership and LLCs (Single member LLCs get a six month extension because they are filed as part of the Owner's individual tax return.)

- Each owner is required to estimate their share of the Company's net taxable income for the tax year and pay in estimated taxes according to the following schedule:

First payment – April 14

Second payment – June 15

Third payment – September 15

Fourth payment – January 15

(Note: Owner estimated tax payments will include the tax on all owner taxable income not already withheld from another source, not just the income from the Company. Tax rates vary by owner taxable income level.)

## **FEDERAL, STATE AND LOCAL TAXES (Continued)**

### **Franchise Tax**

A franchise tax is imposed on C-Corporations and S-Corporations for the privilege of doing business in the State of Mississippi. Franchise tax is calculated on the corporation's state income tax return.

Franchise tax is \$2.50 per \$1,000 of the value of the corporation's capital accounts at the end of the tax year or the assessed value of the corporation's real and personal property, whichever is greater. Minimum franchise tax is \$25.

Franchise tax is due two and a half months after the Corporation's year end (March 15 for calendar year filers).

## **OTHER REPORTING REQUIREMENTS**

### **Internal Revenue Service Form 1099**

- IRS form 1099-MISC is designed to report payments made to individuals and unincorporated companies that exceed established amounts as noted below:
  - Royalty or broker payments in excess of \$10.
  - Rents, services (including parts and materials), prizes and awards, medical and healthcare payments in excess of \$600.
  - Gross proceeds paid to an attorney (even if paid to a corporation).
- Companies should have all vendors complete IRS Form W-9 to capture all information needed to file a 1099 before payment is made to the vendor. A copy of all W-9s should be kept on file for reference as needed.
- Forms 1099-Misc must be mailed to recipients by January 31.
- Forms 1099-Misc and Form 1096 (transmittal form) must be electronically filed with the Internal Revenue Service and the State of Mississippi by February 28, if filing by paper, and March 31, if filing electronically.

## **HUMAN RESOURCES**

### **Employee vs. Independent Contractor**

- An employer must withhold and pay payroll taxes for its employee(s). An employer generally does not have to withhold or pay tax on payments made to an independent contractor. Many workers who are treated as independent contractors are actually employees.

The following factors apply for determining if a worker is an employee or independent contractor. It is important to make the correct determination to avoid penalties imposed by the Internal Revenue Service.

- Employees must follow instruction about when, where and how to work. Independent contractors have more control.
- Training is provided to employees to perform a job in a particular manner.
- If the worker's services are an integral part of the business operations, the worker is generally an employee.
- Services must be rendered personally by an employee. An independent contractor can delegate services.
- If hours are set by the person for whom the work is performed, the worker is more likely an employee.
- An independent contractor is more likely to furnish his own tools.
- Employees do not realize a profit or suffer a loss as a result of services performed.
- Independent contractors are more likely to perform work for more than one company.
- An employee may be discharged at the employer's option.
- An employee may end his relationship with an employer without incurring a liability.

### **New Hires (Employees)**

- The following steps need to be completed for new hires.
  - Have employee complete an IRS form W-4.
  - Have employee complete Mississippi Employee's Withholding Exemption Certificate (Form 89-350).
  - Have employee complete IRS form I-9 within three days of hire.
  - Using the IRS form I-9, complete the E-Verify process to make sure the employee is eligible for hire.
  - Complete Mississippi New Hire Reporting Form within fifteen days of hire.

## **HUMAN RESOURCES (Continued)**

### **Personnel Files**

Current and complete personnel files should be maintained for all employees. Personnel files should be kept confidential and personnel files should include the following:

- Signed and dated application of employment
- Date of hire
- Beneficiary designation form
- Employee's current address and telephone number
- Emergency contact information
- Employee evaluations
- Completed Mississippi Department of Employment Security (MDES) new hire reporting card (to be mailed to the MDES to help prevent overpayment of unemployment funds to new hire previously drawing unemployment).
- Form I-9 Employment Eligibility Verification
- Documentation of any employee disciplinary actions/consultations signed by both employer and employee
- Certification that the employee received and read the employment handbook (if applicable)

### **Payroll Files**

Current and complete payroll files should be maintained for all employees and payroll files should include the following:

- Approved pay rate (updated as changes occur)
- Signed IRS form W-4
- Signed Mississippi Employee's Withholding Exemption Certificate (Form 89-350)
- Insurance and other benefits election forms

## **HUMAN RESOURCES (Continued)**

### **Employment Handbook**

A comprehensive and up to date personnel manual can help communicate, and encourage adherence to company policies, prevent possible confusion, inconsistent treatment, or misunderstandings among personnel, and provide a measure of liability protection to the company in case of employee legal challenges of company actions. (If feasible, have legal council review the handbook before distributing.) Some topics to be covered in an employee manual include the following:

- The company's mission, core business and ethical values, and organization
- Equal employment opportunity, antidiscrimination, and reasonable disability accommodation policies
- Business hours, work schedules, overtime policies, and time keeping procedures
- Employee classifications, salary and over time rates, and pay dates
- Holiday, vacation, disability and sick leave, personal time off, and other attendance and absences policies
- Training programs, performance reviews, and promotion policies
- Travel and expense reimbursement
- Employee benefit programs, including pensions, retirement, medical, disability, insurance and other plans
- Employee conduct policies, conflict of interests, appropriate use of company assets, harassment, substance abuse, disciplinary actions, etc.
- Procedures for making and resolving complaints, harassment, suspected fraud, or violation of company policies
- Employment separation and termination procedures

### **Timekeeping**

Each employee should keep a manual or electronic time sheet/record documenting all hours worked. Time records should be reviewed and approved by an appropriate employee before payroll is processed.

## **HUMAN RESOURCES (Continued)**

### **Wage and Hour Laws**

All employers should be familiar with the wage and hour laws administered under the Fair Labor Standards Act as established by the U.S. Department of Labor (DOL). Rules and guidance can be found at [www.dol.gov](http://www.dol.gov).

Applicable rules include but are not limited to the following:

- Employees must be paid the minimum wage established by the DOL.
- Non-exempt employees must receive overtime pay for hours worked over 40 per workweek at a rate not less than one and one-half times their regular rate of pay.
- Employees exempt from the overtime rule (i.e., exempt employees) include administrative, executive and professional employees, computer professionals, and outside sales employees. The employees must earn more than the annual salary threshold established by the DOL to qualify as exempt. Compensated time off is frequently offered to these employees in exchange for hours worked in excess of 40 hours per week.
- The employer bears the burden of proving that exempt employees have been properly classified.

## **RETIREMENT PLAN**

Setting up a tax advantaged retirement plan can result in tax savings and make your financial future more secure. The earlier you start saving, the better chance you will have of retiring comfortably.

All business types can use one of the following types of defined contribution retirement plans:

- SIMPLE (Savings Incentive Match Plans for Employees) IRA Plan (Must have 100 or fewer employees.)
- SEP(Simplified Employee Pension) Plan
- Profit Sharing Plan
- 401K

### **SIMPLE IRA Plan**

SIMPLE IRA plans are easily established and have no annual filing requirements. A SIMPLE IRA Plan does not have the start-up and operating costs of a conventional retirement plan. To establish a SIMPLE IRA plan you need to choose a financial institution to serve as trustee to hold each employee's/participant's account. Employee accounts are held in individual IRAs in the name of the plan. There are three steps to establishing a SIMPLE IRA plan:

- Execute a written agreement to provide benefits to all eligible employees
- Give employees certain information about the agreement
- Set up an IRA account for each employee/participant

Contributions are as follows under a SIMPLE IRA Plan:

- Employees who have met the two year salary requirements may elect to contribute to the plan up to the elective deferral threshold established by the IRS.
- Employee's elective deferral is excluded from the employee's taxable income.
- Employer is required to match employee contributions up to 3% of wages or contribute 2% of all eligible employees' salary up to the annual threshold established by the IRS (the threshold changes annually) regardless of whether the employee contributes or not.
- Employee is always 100% vested in the plan's matching contributions.

## **RETIREMENT PLAN (Continued)**

### **SEP Plan (Simplified Employee Pension Plan)**

SEP Plans are easily established and have no annual filing requirements. A SEP Plan does not have the start-up and operating costs of a conventional retirement plan. To establish a SEP Plan, you will need to choose a financial institution to serve as trustee of the SEP-IRAs that will hold each employee/participant's retirement plan assets. These accounts will receive the contributions that you make to the plan. There are three steps to establishing a SEP IRA plan:

- Execute a written agreement to provide benefits to all eligible employees.
- Give employees certain information about the agreement.
- Set up an IRA account for each employee/participant.

Contributions are as follows under a SEP Plan:

- Only the employer contributes.
- Max contribution is limited to 25% of each eligible employee's compensation or the overall limit established by the Internal Revenue Service (the threshold changes annually).
- Flexible annual contributions are allowed (good plan if cash flow is an issue).
- Employee is always 100% invested in the employer's contribution to their respective account.
- Employer must contribute equally for all eligible employees.

### **Profit Sharing Plan**

A business of any size can have a profit sharing plan. Contributions to a profit sharing plan are discretionary. There is no set amount of contributions that you need to make but the contributions must be allocated to participant in a non-discriminatory manner. A profit sharing plan can be as simple or as complex as you want to make it.

The following are characteristics of a profit sharing plan:

- Employer contributions only
- All employees meeting eligibility requirements receive contributions
- Contributions are limited to the lesser of 25% of annual compensation or the threshold established by the IRS (The threshold changes annually.)
- Can have other retirement plans along with the profit sharing plan (The threshold established by the IRS applies to the total employee/employer contributions to all plans.)
- Administrative costs can be higher than other plans
- Annual filing of Form 5500 is required and is due by the last day of the 7<sup>th</sup> month after the plan year end (July 31 for a calendar year plan). A 2 ½ month extension is available if necessary.



## RETIREMENT PLAN (Continued)

### 401(k) Plan

A 401(k) plan is a feature of a qualified profit sharing plan that allows employees to defer a portion of their wages to individual accounts. The employee's elective deferral is excluded from the employee's taxable income. (Elective contributions and any associated earnings are taxable to the employee when they are withdrawn.)

401(k) plans are more costly than SIMPLE IRA plans and SEP plans because there are more administration costs associated with record keeping and maintaining the plan. An annual IRS Form 5500 tax return must be filed for the plan by the last day of the 7<sup>th</sup> month after the plan year end (July 31 for a calendar year plan). A 2 ½ month extension is available if necessary.

It is recommended that you consult a retirement professional or financial institution such as a bank, mutual fund provider, or insurance company to help you establish and maintain the 401K Plan. There are four basic actions necessary to have a tax-advantaged 401(K) plan:

- Adopt a written plan.
- Arrange a trust fund for the plan's assets.
- Develop a recordkeeping system.
- Provide plan information to participants, including beneficiary and enrollment forms.

There are several types of 401K Plans:

- **Traditional 401K** – Offers the maximum flexibility. Employers have the discretion to make contributions on behalf of employees, match employee deferrals, or both. Employees can make elective deferrals. Non-discrimination testing applies.
- **Safe harbor 401(k) plan** – Similar to traditional 401(k) plan but the employee is fully vested when contributions are made and non-discrimination testing does not apply.
- **Simple 401(k)** – Created so that small businesses could have an effective – cost efficient way to offer retirement benefit to employees. Employers are required to make employer contributions that fully vest to employees when made. Non-discrimination testing does not apply.
- **One-participant 401(k) plan** – A traditional 401(k) plan covering a business owner with no employees. The business owner benefits from elective deferrals and Company match. Non-discrimination testing is not required since there are no employees.
- **Roth 401(k)** – Contributions are made after an employer withholds employment taxes and distributions at retirement age will not be taxed. Employer matching contributions are pre-tax contributions which will be taxed upon distribution.

## **RETIREMENT PLAN (Continued)**

### **Defined Benefit (Pension) Plan**

A defined benefit plan is a pension plan in which an employer promises a specified monthly benefit on retirement that is predetermined by a formula based on the employee's earning history, tenure of service and age. This type of plan is rarely used by small businesses. This type of plan requires a trustee, an actuary, and a retirement professional.

### **Cash Balance Pension Plan**

Small business owners can benefit from a cash balance pension plan. A cash balance plan is a defined benefit plan that defines the benefit in terms that are more characteristic of a defined contribution plan. The defined benefit to be achieved is a set retirement account balance at retirement.

Older business owners sometimes turn to cash balance pension plans to turbocharge their retirement savings and to reduce their tax burdens. Cash Balance Pension Plans have generous contribution limits that increase with age. People 60 and older can contribute over \$200,000 annually in pre-tax contributions (much more than allowed with the other retirement plans discussed earlier).

Cash balance pension plans require contributions established by an Actuary to be made each year. Once the plan is established the annual set contributions are mandatory. The best candidates for these plans are:

- Partners and owners who want to contribute more than \$50,000 annually to their retirement plans (Contributions between \$100,000 and \$240,000 are allowed.)
- Companies with no employees other than the owners or companies willing to contribute between 5% and 8% to their employees.
- Companies that have demonstrated consistent profit patterns
- Older partners and owners who desire to catch up or accelerate their pension savings. (The older the participant, the faster they can accelerate their savings.)

## **OTHER EMPLOYEE BENEFITS**

### **Health Insurance**

Companies may elect to provide health insurance for their employees. Premiums can be paid solely by the company or the employee may pay for a portion of premiums.

Under the Affordable Care Act, employers with more than 50 full-time employees (FTEs) (an FTE is an employee that works more than 30 hours per week) are required to offer healthcare to their employees that is affordable and provides minimum benefit coverages. Employers who do not comply with the rules will be subject to the Employer Shared Responsibility payment (penalty) as follows:

- \$2,000 times the number of all FTEs less the first 80 employees for employers with 100+ FTEs in 2015 and less 30 employees in subsequent years.
- \$3,000 for each FTE who purchases insurance through an exchange that is subsidized and who is not offered minimum essential coverage and provides minimum value.

Continuation of Health Insurance Benefits (COBRA) must be offered to all employees at the time of termination. Premiums under this coverage will be paid by the employee and can extend for a period of 18-36 months depending upon the circumstances.

### **Health Savings Account**

In order to keep health insurance premiums as low as possible, employers can choose a high deductible health insurance plan and utilize a Health Savings Account (HSA). HSAs can be set up with any qualified IRS approved financial institution such as a bank or credit union. HSAs allow employees to set aside pre-tax savings into an HSA account to cover qualified medical expenses. Distributions from an HSA for qualified medical expenses are not taxable.

### **Cafeteria Plan**

A qualified cafeteria plan is an employee benefit plan offered in the United States pursuant to Section 125 of the Internal Revenue Code that allows employees to pay employee share of health insurance premiums, dependent health insurance premiums, and other supplemental insurance coverage (dental, vision, cancer, hospital confinement, accident and flexible spending accounts) out of pre-tax earnings as a deduction from their salary each pay period.

## **INSURANCE**

Disaster or other unforeseen circumstances can strike at any moment. The impact of uninsured loss on a business and the owner can be devastating. The uninsured loss can cut into business profits or the owner may be liable for the uninsured business loss. Purchasing business insurance protects your investment by minimizing financial risks associated with unexpected events. Additionally, some customers require that the businesses they do business with carry specific types of insurance.

The following types of insurance should be considered:

### **Workers' Compensation Insurance**

Businesses with five or more employees are required by law to carry workers' compensation insurance. Worker's compensation provides insurance to employees who are injured on the job. This type of insurance provides wage replacement and medical benefits to those who are injured while working. Worker's compensation insurance premiums vary based on the risk associated with the employee's assigned duties and the company's claim experience rate.

### **General Liability Insurance**

Every business, even if home-based, needs to have general liability insurance. Business owners purchase general liability insurance to cover legal claims due to accident, injuries, and claims of negligence. This policy type protects against bodily injury, property damage, medical expenses, libel, slander, and the cost of defending lawsuits.

### **Product Liability Insurance**

Companies that manufacture, wholesale, distribute, and retail a product may be liable for its safety. Product liability insurance protects against financial loss as a result of a defective product.

### **Professional Liability Insurance**

Professional liability insurance is sometimes known as errors and omissions insurance. Professional liability insurance provides defense and damages for failure to or improperly rendering professional services. Professional liability insurance is applicable for any professional firm including attorneys, accountants, consultants, notaries, real estate agents, insurance agents, hair salons, and technology providers among others.

### **Commercial Property Insurance**

Commercial property insurance covers everything related to the loss and damage of Company property due to a wide-variety of events such as fire, smoke, wind and hail storms, civil disobedience, and vandalism.

## **INSURANCE (Continued)**

### **Business interruption Insurance**

Business interruption insurance covers the loss of income that a business suffers after a disaster while the business is either closed because of the disaster or in the process of rebuilding after a disaster. This type of coverage is generally sold as an add-on to the commercial property insurance policy.

### **Commercial Auto Insurance**

Vehicles used by the company should be titled and insured in the company's name where possible. Commercial auto insurance can insure company vehicles from losses caused by damage and collisions. If you do not have company vehicles, but employees drive their own cars on company business, you should have non-owned auto liability to protect the company in case the employee had inadequate insurance coverage.

### **Key Person Life Insurance**

Key person insurance is life insurance on the key person(s) who are crucial to the business and upon whom the continued successful operation of the business depends. Key person(s) can be the owners, founders, or employees. Key person insurance policies should name the company as beneficiary and would be a deductible expense for the company. Key person insurance coverage can be purchased in a nomination large enough to cover any owner buyout/payout provisions and to keep the company operating during the company's period of adjustment following the loss of the key person.

### **Key Person Disability Insurance**

Key person disability insurance provides benefits to protect the company financially in the event that a key employee can no longer work due to a disability. Key Person coverage provides cash flow to help companies move forward and maintain a profit in the event that a key employee becomes disabled.

## **RISK ASSESSMENT**

Ongoing risk assessment is important to the success of any business. Today's business environment is constantly changing. It is unpredictable, volatile, and complex.

Risk assessment is a systematic process for identifying and evaluating events (threats and opportunities) that could affect the company's ability to achieve its objectives. Risk can be defined as the possibility that an event will occur and adversely affect the achievement of objectives. The following opportunities and/or threats should be considered on an ongoing basis:

- **External Factors**
  - Economic trends
  - Regulatory trends
  - Competition
  - Technological changes
  - Customer trends
  - Supply chain trends
- **Internal Factors**
  - Employees
  - Internal controls/fraud risks
  - Processes and procedures
  - Infrastructure

Risk assessment should be integrated into the business process in a way that it provides timely and relevant risk information to allow company management to make decisions on an ongoing basis, to capitalize on new opportunities, and to protect itself against new threats.

## **CYBER SECURITY**

The modern business environment is continuously changing and trending more toward internet connectivity and web presence. As information systems and the number of users increase so does the security related to those systems. Cybercrime is a growing enterprise and can have a huge negative impact on any business. The reality of cyber risk management is that risks are impossible to eliminate, resources are finite, and risk profiles are ever changing. That is why it is important to identify and focus on the company's most important information assets and systems (the "crown jewels") by understanding the changing threat landscape and risk tolerances and preparing for the inevitable incidents.

Companies should work with their information technology support team (in house or outsourced) to focus on preventive and detective security measures and incident response plans to protect the company's assets and information. Items to consider are as follows:

- Who are our likely adversaries?
- How are they likely to attack us?
- Where are our biggest vulnerabilities?
- What is our exposure to contractors, vendors, suppliers, consultants, and insiders (employees)?
- How effective are our current internal controls in managing these issues and what are they costing us?
- What has been the nature and severity of prior cyberattacks? How will we know if they strike again?
- Are our mobile device and acceptable use policies adequate?

The majority of breaches occur by employee error; therefore, continued/recurring training is a key preventative measure.

## **CONCLUSION**

Starting a new business can be exciting and challenging. AVL's team of advisors can assist you in moving your business forward and addressing the problems that you face in today's challenging business environment. Starting off on the right foot from the beginning will help ensure your future success. We welcome the opportunity to be a part of your team and wish you the best of luck on your new endeavor.



## **BUSINESS RESOURCES**

Alexander, Van Loon, Sloan, Levens & Favre, PLLC  
Certified Public Accountants  
[www.avlcpa.com](http://www.avlcpa.com)

AVL Wealthcare, LLC  
Investment and Wealth Management Advisors  
[www.avlwealthcare.com](http://www.avlwealthcare.com)

Mississippi Secretary of State  
[www.sos.ms.gov](http://www.sos.ms.gov)

Internal Revenue Service  
[www.irs.gov](http://www.irs.gov)

Mississippi Department of Revenue  
[www.dor.ms.gov](http://www.dor.ms.gov)

Mississippi Department of Employment Security  
[www.mdes.ms.gov](http://www.mdes.ms.gov)

United States Department of Labor  
[www.dol.gov](http://www.dol.gov)

United States Small Business Administration  
[www.sba.gov](http://www.sba.gov)

Mississippi Gulf Coast Chamber of Commerce  
[www.mscoastchamber.com](http://www.mscoastchamber.com)

Mississippi Development Authority  
[www.mississippi.org](http://www.mississippi.org)