

SelfInformed

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HOW TO Protect Your Employees'

Health And Privacy Rights

It's a jungle out there—the tangled thicket of government rules and regulations companies must navigate to protect employees' health and privacy rights. Naturally, you want to do what's best for your workers. But good intentions won't keep you from a brush with the health police—the numerous federal and state agencies that enforce key health provisions.

This article will help you understand the rules and find authoritative sources of information.

Workers' Compensation Insurance

If you have employees, you need workers' compensation for your own protection. If you don't have it, and an employee is injured at work, you could be faced with a civil suit as well as fines and stop-work orders.

Workers' comp represents a "compensation bargain" between employer and employee. Employees hurt on the job receive money and medical benefits; in exchange, they forfeit the right to sue employers.

State law may or may not oblige you to get coverage. In Missouri, you must have insurance if you employ five or more people. Minnesota requires it if you have even one part-time employee.

In most states you can purchase workers' comp insurance from private insurers. A dozen states operate insurance funds to provide riskier businesses with coverage. Talk to your insurance agent or broker about options and costs.

The [U.S. Department of Labor website](#) provides contact information for state workers' comp officials and links to state workers' comp websites.



The privacy rule means an employer can't ask an employee direct questions about medical problems.

The Family Medical Leave Act

Companies with fewer than 50 employees aren't bound by the federal Family Medical Leave Act (FMLA), although state laws may be more restrictive.

The act as passed in 1993 says that covered full- or part-time employees are eligible for as much as 12 weeks of unpaid leave each year under certain circumstances. Qualifying events are:

- The birth of a child or placement of an adopted or foster child
- The need to take care of an immediate family member with health issues
- The employee's own serious health condition

In January 2008, FMLA was amended to allow an immediate family member or next of kin to take as much as 26 weeks of leave to care for a member of the Armed Forces who is receiving medical treatment or therapy for serious injury or illness.

Leave needn't be taken in a lump. Employees may request it in increments as small as an hour.

To learn more about complying with FMLA:

- [U.S. Department of Labor](#)
- [Your state labor office](#)

Americans With Disabilities Act

The Americans with Disabilities Act (ADA), signed into law in 1990, prohibits employers from discriminating against qualified people with disabilities when it comes to hiring, firing, advancement, pay, training, benefits and job conditions. A "qualified individual" is one who can perform a job's essential functions with or without "reasonable accommodation."

At the federal level, the law applies if you have 15 or more employees. But, your state may have stiffer rules. In Massachusetts, for example, businesses with six or more employees must comply with ADA.

For details, contact your state department of labor or one of the 10 government-sponsored regional [Disability and Business Technical Assistance Centers](#).

Reasonable accommodations could include making your worksite accessible to someone who has a disability, restructuring a job, and buying or modifying equipment needed to perform the work. Note that "reasonable accommodation" does not force an employer to reduce her standards or to make changes that would impose "undue hardship" on the business.

What about accommodating customers? Unless your company is a private club or religious entity, ADA obligates all public businesses to offer customers "access to goods and services," although the government says the provisions do not require "any action causing undue financial burden."

As an example, even though your business is off limits to dogs, you must allow access to customers (or employees) who use service animals.

Admittedly, key ADA phrases such as "undue financial burden" and "reasonable accommodation" are fuzzy and open to wide interpretation. When questions come up, take advantage of these resources:

- Free consultation from your regional [Disability and Business Technical Assistance Center](#)
- [The U.S. Equal Employment Opportunity Commission](#)
- Employment policy resources at [Department of Labor's Office of Disability Employment Policy](#)
- Free consultation and technical assistance from the [Job Accommodation Network](#)

Small businesses may qualify for tax credits and deductions that can help offset the cost of accommodations, building modifications and barrier removal. Ask your tax professional or visit the [IRS website](#).

HIPAA Regulations

Passed in 1996, the Health Insurance Portability and Accountability Act (HIPAA) has two aspects. Title I has to do with protecting workers' health coverage when they change jobs. Title II governs, among other things, the security and privacy of health information.

Title I obligates all employers who offer a health plan to provide a "certificate of creditable coverage" when an employee changes jobs or buys individual health insurance. When you hire someone, ask about his or her certificate if your company's health plan has exclusions for pre-existing conditions. The certificate assures that credit for such conditions carries over from one health plan to the next.

As part of Title II, HIPAA's "privacy rule" sets the conditions under which a health plan can share individually identifiable health information with an employer or plan sponsor. If you sponsor a group health plan for employees, the plan is a "covered entity" subject to HIPAA regulations. The only exception is self-insured and self-administered plans with fewer than 50 people participating. These small plans are not subject to the privacy rule.

Even when a group health plan is administered by an insurance company, you and the insurer are both responsible for making sure the plan complies with HIPAA.

The privacy rule means an employer can't ask an employee direct questions about medical problems and treatment because the answers constitute "protected health information" (PHI). Nor can a human resources clerk in your business give you this information—for example, that another employee has been diagnosed with a disease.

You're in dangerous territory when it comes to discussing health issues with workers.

Experts recommend that businesses keep PHI wholly separate from other employment records, in secure filing cabinets and protected computer databases. Share it only on the strictest need-to-know basis.

To protect your company and employees' information designate a specific company official who's responsible for implementing privacy policies and safeguards. Make sure all employees are aware of your policies and document any training or policy statements workers have received.

To learn more, consult the [Department of Health and Human Services Office for Civil Rights](#).



For More Information
To learn more, visit these government-sponsored websites.

Note: The information presented in this article does not constitute legal advice.

Forbidden Questions: What You Can And Can't Ask Employees

You're in dangerous territory when it comes to discussing health issues with workers.

The less you ask, the better. And when you do discuss medical concerns that have a bearing on work, focus on whether the employee can perform essential job tasks rather than his specific health conditions or problems.

If an employee says he needs several days off for medical treatments, you can't inquire what the problem is or what the treatment will be. You are within your rights, though, to ask whether he will need any special assistance to perform his duties after coming back to work. You can also require medical documentation—such as a note from a doctor—but only if all workers who take sick leave must also abide by the policy.

If an employee appears to have a disability, you can ask whether she needs accommodation to help her do her job. If she discloses her disability to you and asks for accommodation, you can discuss the options. You can also request medical documentation for a disclosed disability.

If you have good reason to suspect that a medical problem renders an employee unable to perform essential job functions or that it puts him, employees or customers in danger, you can ask for specific medical information or compel him to have a doctor's exam. But tread lightly. Make sure you can document a legitimate business need for the information. When in doubt, consult an attorney before initiating that conversation.

The bottom line is that your requests for medical information must be based on one of the following:

- Disclosed problems
- Documented performance issues
- Requests for accommodation
- A stated need for family or medical leave

Help Employees With Health Issues Without Overstepping The Law

Focus on ways you can help rather than the employee's specific health challenges. Always be ready to consider and discuss modifications that can help an ill or disabled worker maintain high job performance.

Keep health concerns confidential, telling other workers the bare minimum that's necessary to provide accommodations, maintain a safe environment or process workers' comp or insurance claims.

Defuse concerns that some people get special treatment (for example, a diabetic worker who is allowed to snack at his desk) by making it clear that you'll do what you can to help any employee who has health issues.

Of course, it's illegal to discriminate based on health or disability—but your group health plan is allowed to encourage good health habits by offering discounts or rebates for those who take part in wellness or disease-prevention programs. ■

THE NASE PRESENTS

\$20,000 Achievement Award To Member

Fifth Annual Award Goes To Dog Sport Equipment Manufacturer

By Molly Nelson

Most business owners would jump at the chance to have a client like Lucy. Although she doesn't say much about it, she played an integral role in Pat Bennett's decision to start what is now a growing manufacturing business.

It was Lucy's interest in lure coursing that prompted Bennett to start her La Mesa, Calif.-based business, **Wicked Coursing**. Wicked manufactures multiple types of lure coursing machines, and Lucy, one of Bennett's Bedlington Terriers, is a fan of all of them.

Although lure coursing is a simple sport—dogs chase a plastic bag lure attached to a string—the machines require intricate design and assembly. Dissatisfied with the design issues of an existing manufacturer's product, Bennett realized she could design and build a better machine herself. So in 2008, she launched her business with a version of the current Lure Baby machine.



Apply For An NASE Growth Grant™

Need working capital for your micro-business? Apply for an **NASE Growth Grant** worth up to \$5,000.

To be eligible, you must be an NASE Member in good standing and provide detailed documentation about your business.

Get all the information you need to apply at NASE.org.

Bennett's \$5,000 grant was part of more than \$530,000 in grants given by the NASE since 2006.

With the goal of staying competitive by bringing production of a machine component in-house, as well as growing her business by bringing a new product to market, Bennett applied for an NASE Growth Grant™ in December 2010. Bennett's \$5,000 grant was part of more than \$530,000 in grants given by the NASE since 2006.

The grant allowed Bennett to launch her company's newest product, the small and affordable ZippityDog™, in record time. The product was ready for sale on her

website in just a few months—a process that otherwise would have taken at least a year. Orders for 20 ZippityDogs came in soon after the product was made available on Bennett's website, and by mid-2011 more Wicked products had been sold than in entire past years.

Recognizing Bennett's ability to leverage a small amount of money to expand her business, while simultaneously driving innovation and fostering the entrepreneurial spirit, the NASE awarded her the \$20,000 Achievement Award.

GROWING HER BUSINESS

After a year of running all aspects of the business herself, Bennett hired Darren McComas in 2009 as Wicked's production manager. Together, they worked to streamline the business's existing products as well as design, build, test and launch additional machines.

Today, Wicked Coursing produces four types of lure coursing machines—from the reversible continuous-loop L'il Monster for field events with many dogs to the new hand-held ZippityDog.

Bennett says she works more hours running her own business than she ever did working for someone else. She handles Wicked's administrative needs from her home office. Design, production, repairs and product shipping is based at the company's new 500-square-foot space.

The workspace is a big improvement. Before receiving the Achievement Award, Bennett and McComas had worked off of adjacent workbenches in a 10-by-15-foot self-storage unit, manufacturing all of Wicked's machines from start to finish.



The NASE grant allowed Pat Bennett (right) to launch a new product in record time.

One-On-One Advice From The NASE Experts

Along with her \$20,000 Achievement Award, Bennett also received one-on-one consultations with NASE micro-business experts at Business 101 and TaxTalk. Here are some of the suggestions they offered.

Gene Fairbrother, lead micro-business expert with NASE's Business 101.

Continue Business Planning

It's important for all business owners to revisit and update their business plans, especially as their business grows and changes. While Wicked Coursing has created a fairly extensive business plan, the key emphasis of the plan should take a more strategic direction to identify and act on the most critical parts of the business to help organize the growing opportunities in the marketplace.

Improve Infrastructure

Your business certainly has opportunities for growth, but your current business infrastructure (staffing, inventory and manufacturing) is unable to support many more sales. Your company must be capable of meeting the demand for your products before you add many new clients or expand the marketing efforts of the business.

Don't Lose Focus On Marketing

While the ability to produce products is critical, you also need to be developing your marketing plan. As the business adds staff and increases the ability to manufacture, the marketing plan needs to be gradually implemented to create more product demand. This will include revising your current website, building a stronger national relationship with associations like the American Kennel Club, promoting more clinics at municipalities and dog parks, and developing a stronger customer contact and communications program.

Keith Hall, certified public accountant and TaxTalk consultant.

Selecting An Entity Form

Even from the very beginning of your business, the entity form you choose can have a large impact. From tax benefits and legal liability to paperwork and compliance burdens, making the choice between an S Corporation and an LLC, or any other entity form, can make a big difference in running your business. There are certainly pros and cons to each choice, but having the right information can help you make the right choice.

Employee vs. Independent Contractor

An issue faced by many self-employed and micro-business owners as their business starts to grow is that of worker classification. Information available from the IRS on whether a worker is an employee or independent contractor is often hard to understand. However, it's important for you as the business owner, as well as for Darren and any other future workers to know their classification for taxes, compliance, liability and many other issues.

Finding Funding

You're reaching a point in your business where additional growth may very well depend on outside funding. Additional borrowing from a local bank or through an SBA guaranteed loan can be useful although potentially expensive, while investments from venture capitalists or angel funding sources can dilute your ownership control. Make sure to use the resources available to you as an NASE Member to help you evaluate your options.



LOOKING TO THE FUTURE

NASE President Kristie L. Arslan presented Bennett with a \$20,000 check at a ceremony in front of her family, friends and Wicked's employees and business associates.

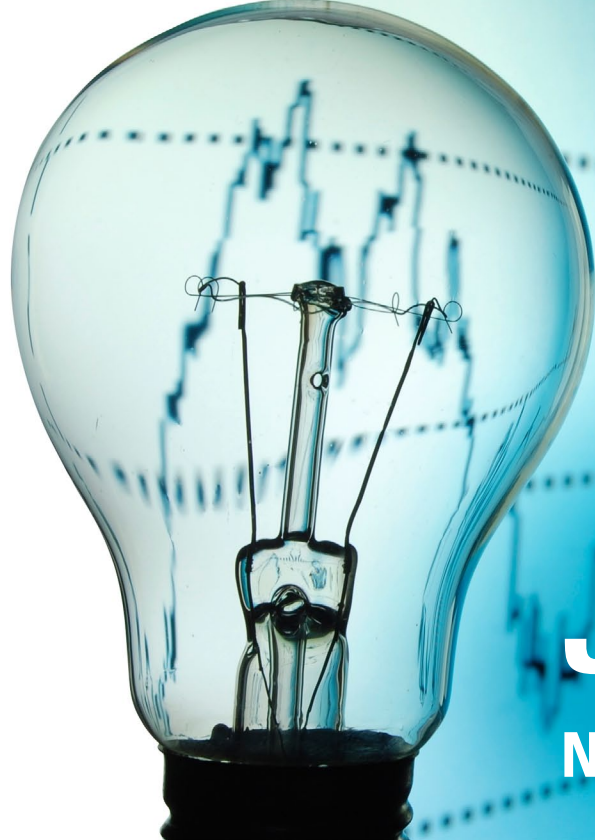
"Pat is a shining example of how small-business owners do more with less," said Arslan at the ceremony. "We know Pat is going to make her dream a reality, and we're humbled to offer a helping hand along the way."

Bennett has big plans for her business, and for the achievement award funds.

She plans to prepare Wicked Coursing for even greater growth by upgrading and adding equipment and purchasing workflow management software. Bennett also plans to invest in components and materials to build up her inventory. Expanded marketing efforts—including print advertising and showing Wicked's products at pet expos—will help Bennett introduce her products to a wider audience.

"The award is going to be instrumental in getting us to the next level," Bennett said. "You have truly made a difference in my life and provided me with the opportunity to take Wicked where my vision has pointed." ■

Molly Nelson is the NASE's Member Communications Manager. She was honored to help out as Huntmaster at one of Bennett's lure coursing events.



Innovation + Job Creation = National Self-Employment Initiative

By Kristie L. Arslan

Washington, D.C., is awash in rhetoric about the importance of America's small businesses as engines of economic recovery. But there is little to no action coming out of the policy arena to help these businesses actually fuel economic growth.

Instead, they have **been largely left out of the policy discussion** when it comes to the president's American Jobs Act and our national debt.

It's politics as usual as the fight over the president's jobs bill leaves America's small-business owners wondering if Washington actually gets it. **Our policymakers like to claim they want to help the small-business community**, but they don't take action to back it up.

The economic outlook for our nation's smallest businesses—the self-employed and micro-businesses—is bleak even if we avoid the threat of a double-dip recession. Giving small businesses the support they need to turn things around should be a top priority that rises above party politics up on Capitol Hill.

The initiative should prioritize simplifying the tax code and creating tax parity for self-employed business owners.

Too many of the current policy proposals are focused on what Washington sees as the job-producing class—the wealthiest Americans—who are clearly not creating jobs with or without generous incentives. We need a **national self-employment initiative** to help America's smallest businesses survive the current economic turmoil and to help some of the 9 million people who are out of work join the ranks of the self-employed.

What should this national initiative entail?

First, the initiative should prioritize simplifying the tax code and creating tax parity for self-employed business owners. When **President Obama proposed his jobs plan** before a joint session of Congress, I suggested:

"The president and Congress can start by making the tough decisions. The tax code is a good place to start. Self-employed business owners need to be CEO, COO and head of sales as well as their own accountants. They don't have the luxury of big business accounting departments that can manage the complicated and ever-changing tax system."

Second, direct small-business financing to startups and the self-employed. Access to capital is crucial to the growth of new firms, and micro-lending is especially important to help bolster the self-employed, allowing them to take small steps to grow.

Third, foster entrepreneurship education in secondary schools as well as colleges and universities. Make starting a business a viable career option for our young Americans and teach them the skills they need to turn their ideas into profitable businesses.

Finally, assist all states in launching self-employment training programs for residents. These training programs should be available free to all unemployed citizens—providing them with an avenue to create their own job, should they be unable to find one.

These **long-term policy solutions** are a recipe for innovation and job creation, two concepts that everyone in Washington can get behind. ■

Kristie L. Arslan is president and CEO of the NASE and provides critical insight to policymakers on issues affecting our nation's self-employed. You can contact her at advocacy@NASE.org.