



WOODS | AITKEN

CORPORATE WELLNESS CHECK

A COMMON PROBLEM

As times get busy, not every company takes the steps necessary to (i) keep organizational documents updated and in good form, (ii) maintain proper records, and/or (iii) stay up to date on workforce regulations. For example, many companies overlook state filing requirements, forget to hold annual meetings, never adopt an operating agreement or set of bylaws, incorrectly issue stock or membership units, improperly elect managers, officers, and/or directors, or fail to implement and utilize compliant wage and/or leave policies. Often, these internal items are only given attention once a problem has occurred or a third-party (e.g., a governmental subdivision or a party asserting a legal claim) requires affirmation that all such items are in order and no deficiencies exist.

ORGANIZATIONAL DOCUMENTS AND RECORDS

The key organizational documents and records that should be kept and maintained depend, among other things, on the type of entity in question and applicable law; however, set forth below are the types of organizational documents and records that an entity would be expected to have (and maintain current):

- Formation (e.g., articles of incorporation, articles of organization, certificates of formation, amendments, etc.).
- Governance (e.g., operating agreements, bylaws, buy/sell agreements, shareholders agreements, amendments, etc.).
- Ownership (e.g., capitalization tables, subscription agreements, stock certificates, etc.).
- Actions (e.g., entity actions, minutes, resolutions, written consents, etc.).
- Filing Requirements (e.g., licensing permits, Secretary of State filings, regulatory agency filings, etc.).

HR CONSIDERATIONS

- Notices (e.g., compliance with federal and state workplace posting requirements).
- Leave Policies (e.g., adoption of compliant sick leave and paid leave practices).
- Employment Contracts (e.g., use of enforceable contract provisions, valid noncompete covenants, employee and independent contractor agreements, personnel files, I-9 records, employee handbooks, long-term incentive and non-qualified deferred compensation plans, etc.).
- Wage and Hour (e.g., compliant payment practices, proper overtime calculations, etc.).

WHY IT MATTERS

The deleterious effects of deficient, incomplete, inaccurate, or nonexistent organizational documents, internal records, or noncompliant HR practices are numerous – certain examples are listed below.

- Increased potential exposure to legal liability for affiliated companies and/or personal liability for owners, members, stockholders, etc.
- Creation of issues and delays when attempting to consummate various corporate transactions (e.g., such as financings, sales, mergers, acquisitions, etc.).
- Monetary fines and penalties imposed by governmental agencies.
- Inability to take advantage of tax deductions and savings strategies.
- Inability to minimize the time and cost for any third-party requests (e.g., financial, legal, tax, etc.).

HOW WE CAN HELP

It is best practice, less costly, and good risk management to conduct an annual review of your organizational and internal documents (and address any issues promptly upon discovery). Here is how we can help:

- Take inventory and review your organizational documents and records.
- Identify any areas of concern and exposure and provide recommendations.
- Provide your company with (i) an update regarding your “good standing” status from the Secretary of State of the state in which your company is domesticated, and (ii) a current lien report and summary for your company (limited to the jurisdiction in which your principal place of business is located).

Please contact any of the attorneys in the Business Services or Labor & Employment Practice Groups at Woods Aitken for assistance. For existing clients in good standing, we offer a flat rate for the above services. To the extent you desire our assistance in curing any defect or implementation of any recommended action, we can perform such services on an alternative fee basis or at modified hourly rates.