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Wolters Kluwer
Corporate Legal Services

Managing Business
Licensing Obligations

WHITE PAPER

MANAGING BUSINESS LICENSING OBLIGATIONS



The number of agencies at the federal, state and local levels gives rise to a maze of business licensing, registration and permit requirements. These requirements vary by location and by type of business activity. Consequences of noncompliance also vary, ranging from fines to criminal sanctions to operational shut-down. In recent years, many businesses have experienced new or increased fees, plus increased enforcement of licensing requirements. Whether performed by internal staff, an external service provider, or a combination of both, licensing compliance is increasingly important in today's regulatory environment.

INTRODUCTION

Throughout the business life cycle, various licenses, registrations and permits typically are required, along with payment of associated fees and taxes. For any one business, an assortment of licensing obligations may be imposed at one or more levels of federal, state, or local governments.

The various required licenses, registrations and permits may be placed into three broad categories:

- **General licenses and filings.** These include sales tax permits, workers' compensation filings and payroll forms. For example, most states impose sales and use taxes. Businesses subject to these taxes must comply with any registration, license or permit requirements.

- **Regulatory permits.** Business operations in certain industries, such as construction, transportation and food, typically require regulatory permits.
- **Local licenses and filings.** Various local jurisdictions, such as cities and counties, typically impose licensing requirements on a wide variety of businesses.

Companies would be well-advised to avoid the risks incurred by licensing, registration or permit violations. These risks include not only fines and penalties, but also arrest or the cessation of business operations by tax and licensing authorities.

Good licensing compliance has other advantages besides avoiding risks. Staying compliant helps a business stay poised for expansion and ready for unexpected growth opportunities. Also, in today's transparent regulatory environment, good compliance helps a business maintain its positive public relations.

REQUIRED LICENSES VARY BY LOCATION AND TYPE OF BUSINESS

Licensing, registration and permit requirements vary by locality, as well as by the type of business or activity within a locality. The procedures for complying with assorted licensing requirements also vary among states and municipalities.

Types of permits commonly required include local business licenses or tax permits, building permits, zoning permits, health permits, sign permits, home-based business permits and occupational permits.

Practice Pointer: *A business that discovers a compliance failure should check to see if it might be eligible for a license amnesty program. Even without such a program, it is generally better for a business to contact its advisor and address a failure immediately, instead of waiting for authorities to implement enforcement measures.*

LICENSING, REGISTRATION AND PERMIT REQUIREMENTS VARY BY LOCALITY, AS WELL AS BY THE TYPE OF BUSINESS OR ACTIVITY WITHIN A LOCALITY.

OBTAINING THE NECESSARY LICENSES, PERMITS OR REGISTRATIONS WHEN A BUSINESS IS FORMED IS ONLY ONE PIECE OF THE LICENSE MANAGEMENT PUZZLE. OVER TIME, THE UPDATING AND RENEWAL OF CERTAIN LICENSES MAY ALSO BE REQUIRED.

Compliance concerns for the new business. Any new business will likely have to obtain one or more business licenses in order to open for business. The licensing requirements of various local jurisdictions, such as cities and counties, will vary depending on where the company does business and the type of business.

Starting a new business entails complying with general business requirements, such as a basic business license, tax ID numbers, sales tax permits, and any workers' compensation filings or payroll forms.

Practice Pointer: *A business may still have to obtain the requisite licenses even if it is home-based. Also, a home-occupation permit may be required. Zoning laws should also be evaluated and complied with.*

Compliance concerns for the growing, existing or dissolving business. Obtaining the necessary licenses, permits or registrations when a business is formed is only one piece of the license management puzzle. Over time, the updating and renewal of certain licenses may also be required.

Practice Pointer: *Any licensing costs necessary to support business operations, or to carry out an expansion or contraction, should not be forgotten in annual budget planning.*

Expanding into a new state or locality calls for complying with any new licensing requirements. Because license requirements vary by location, expanding businesses should evaluate the need to obtain any additional licenses when entering a new area. These requirements could differ from those the business has experienced in its home location.

THE GOVERNMENTAL TRENDS IN TODAY'S REGULATORY LANDSCAPE HAVE MOVED TOWARD INCREASED REGULATIONS, OVERSIGHT AND LICENSING. AN INCREASING FOCUS ON COMPLIANCE AND TRANSPARENCY HAS ALSO COME FROM CONSUMERS, BUSINESS PARTNERS, EMPLOYEES AND SHAREHOLDERS.

Even if the geography of operations does not change, a change in business operations could implicate the need for a new license. These types of changes include:

- launching a new product or service line
- changing a name
- incorporating a sole proprietorship

If a decision is ever made to dissolve a business, any current licenses will need to be canceled as part of the process. As with the initial filings and renewals, this may need to be done at some or all of federal, state and local levels.

INCREASING FEES AND ENFORCEMENT

The governmental trends in today's regulatory landscape have moved toward increased regulations, oversight and licensing. An increasing focus on compliance and transparency has also come from consumers, business partners, employees and shareholders.

To assuage financial and budgetary constraints, many localities are considering, and adopting, new or increased fees or requirements. Some authorities have also increased enforcement efforts against unlicensed businesses, in contrast to the paucity of enforcement previously enjoyed in some areas. As a result, many companies are experiencing a growing need to monitor their business license management.

Practice Pointer: *In today's compliance-focused climate, a "pay-the-fine-as-necessary" approach, which may have "worked" in more lax enforcement environments, is likely not the best approach. Since business licenses are public record, a violation risks negative publicity, adverse public perception, and damage to a company's good name and positive reputation.*

FAILING TO MAINTAIN THE CORRECT LICENSES OR PAY THE NECESSARY FEES COULD RESULT IN A VARIETY OF CONSEQUENCES, BECAUSE EACH MUNICIPALITY MAY LEVY ITS OWN PENALTIES FOR NONCOMPLIANCE.

Consequences of failing to comply. Failing to maintain the correct licenses or pay the necessary fees could result in a variety of consequences, because each municipality may levy its own penalties for noncompliance. For example, the business may have to pay monetary fines to remedy violations. Also, tax and licensing authorities may force cessation of business operations until the violation has been remedied. In some cases, violations could incur liens or carry criminal penalties.

Practice Pointer: *Some businesses underestimate the potential results of licensing noncompliance, especially if they have been operating in lax enforcement areas to-date.*

Compliance failures could also affect the timely implementation of strategic business decisions. For example, they could result in:

- delayed mergers or acquisitions
- delayed expansion of product lines or services
- delayed opening of new locations
- company officials being summoned to appear in court
- adverse publicity that negates brand-building
- damage to the company’s reputation and goodwill

MANAGING BUSINESS LICENSE COMPLIANCE

Laws and regulations are continually changing, along with the varied number and types of licenses, permits or registrations a business may need. Maintaining proper compliance requires staying up-to-date with the different license, permit and registration procedures of the various governmental authorities.

A BUSINESS MAY CHOOSE TO PERFORM ITS LICENSING MANAGEMENT OBLIGATIONS INTERNALLY. ANOTHER OPTION IS TO OUTSOURCE LICENSING COMPLIANCE TO A SERVICE PROVIDER.

Practice Pointer: Each authority has its own system or method. Many offer their own online services for obtaining a license, completing a renewal and paying associated fees.

To stay compliant, a business must monitor and comply with renewals and any other regulations or requirements levied by governmental agencies. Given the dynamic nature of business and the diversity of requirements, this could involve more than filing periodic reports. For example, a business may have to handle:

- changes in name and entity structure
- changes in operational activities
- opening of new locations
- additions of new products or services

A business may choose to perform its licensing management obligations internally. Another option is to outsource licensing compliance to a service provider. These companies typically offer services that vary by the level of service a business requests. For example, a business may choose among research services, preparation and filing services, or full outsourcing services.

For companies that prefer to prepare and file licenses themselves, research services could generate a gap analysis that identifies whether the business is fully compliant, and if not, the necessary actions. These services are generally provided on a one-time basis.

Practice Pointer: For those interested in doing their own research, the Small Business Administration offers a zip-code based [online tool](#) to help determine the required licenses and the agencies to contact.

Preparation and filing services build on the research and gap analysis. They obtain, prepare and file licenses on behalf of the business and are provided on an as-needed basis.

Full outsourcing services provide ongoing licensing management. They typically manage renewals and ongoing compliance throughout the business lifecycle.

CONCLUSION

The assortment of federal, state and local governments, and their subordinate agencies, creates a seemingly endless labyrinth of ever-changing regulations and requirements, which vary by business location and activity. Consequences of noncompliance also vary, ranging from monetary fines to a shut-down of business operations, and many businesses have experienced new fees and increased enforcement in recent years. In the current regulatory environment, licensing compliance is increasingly important, regardless of whether a company chooses to outsource some or all of these obligations or to perform its own licensing management.

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