

Equestrian Member Life Services Educational Initiative:

Employer Resources



Through this initiative, the USHJA seeks to provide educational resources to members on important topics such as long-term contingency planning, insurance, retirement planning and employer resources.

By Tricia Booker

When entering the equestrian world as a professional, you might think that gathering clients, horses and ribbons are your first priorities. And while those are certainly important aspects of establishing yourself as a rising professional in the sport, there are other tasks on the business side that should be tackled first.

Choosing the type of business you wish to run, writing a business plan, obtaining liability insurance, drafting contracts and researching the paperwork needed when hiring employees might be mind-numbing to think about, but they are each vitally important and should be at the top of your to-do list.

In this fourth and final installment of the Equestrian Member Life Services Educational Initiative, horsemen and legal experts Marianne Kutner and Armand Leone address the matters that professionals need to consider when starting a business and hiring employees.

“The first thing I recommend when starting a business of any type is to thoroughly research the types of businesses that may work for you, such as a sole proprietorship, partnership, limited liability corporation or C corporation, and choose the one that best fits the scope of your business,” said Marianne Kutner.

Equestrian businesses are usually C corporations or LLCs because they provide you with personal liability protection. C corporations and LLCs are typically used for small business activities, such as for professional riders and trainers with sales and training programs, and they enable you to take on new owners or investors as your business grows. Both allow income to pass to owners, who report it on their personal returns. They cost about the same to set up, depending upon

the filing and the ongoing fees imposed by the state in which you incorporate. One key difference is how owners are affected by employment taxes, which is something you should investigate to learn which one is right for your business model.

From there, you can establish a business plan based upon the type of business you select. It’s also vitally important to establish and follow proper business practices, and to know the legal and moral responsibilities of becoming a responsible employer. While the latter sounds like a daunting task, it’s really a matter of researching and obtaining the necessary resources to help you on your way.

“Just remember: This process will be twice the cost and take twice the time that you think it will,” said Leone, with a smile. “Just be patient and understand there will be delays and bumps along the way, but it will be well worth it to do it all correctly.”

Kutner and Leone offer you their thoughts in this concise primer on the major steps you should take as

you establish yourself as a professional. If you’ve already started to run a successful business, consider this article a checklist that you can review to ensure that all of your i’s are dotted and your t’s are crossed.

Because the states have different rules and regulations, it’s highly recommend that you con-

tact a lawyer in your jurisdiction for more information and direction on these topics as you proceed.

This educational initiative was prompted by USHJA members Otis “Brownie” Brown and Fran Dotoli, who reflected on the recent loss of friends in the industry. They realized that while some were well prepared for the inevitable, others hadn’t taken action, and their families were left scrambling without wills or resuscitation contracts, for example. They



were faced with difficult decisions while trying to also cope with emotions and financial burdens.

Brown reached out to the USHJA staff with an idea to put together a series of articles to address the importance of being properly prepared for your life, wherever it might lead. Because none of us knows exactly how long we'll live, it's vitally important to have a will, as well as a retirement plan. Because we can't predict if and when an accident might occur, medical and liability insurance and workers' compensation should be on your radar, as well.

We hope you'll consider this article a shortcut or "app" that you can save for future reference. The same information will be provided on the USHJA website (www.ushja.org) in a new "Best Practices" section that you can access on the front page. If you missed the previous three installments in the July, September and November 2015 issues, which addressed long-term contingency planning, retirement planning and liability insurance, you'll find them there, as well.

This information is offered solely as an educational service to the USHJA community and the general public. This content is not intended to provide—nor does it constitute—legal advice or legal opinions, and should not be relied upon as legal advice or opinion.

Contracts/Employment Agreements

Agreements and contracts save a lot of time; therefore, it's wise to spend time initially working with an attorney to draw up proper documents that you can use within your business. You'll prevent misunderstandings and potentially litigious situations with a small initial investment in time and money.

"You should have contracts for your employees and services, such as boarding, liability releases, bills of sale, lease contracts, liability insurance, security deposits and even non-compete agreements for assistant trainers," said Leone. "Ideally, the documents should be reviewed by an attorney who understands equestrian businesses and the laws of the state in which you reside.

Taking care of these documents in advance often prevents issues in the future," he added. "Say you hire an assistant trainer and she stays for a year, but then leaves and takes your two best clients. Having a reasonable non-complete clause in your employment contract for situations like that is imperative."

Even something as simple as a one-page document that defines the terms of employment, such as salary, benefits, vacation and termination by either party, will keep the lines of communication open between employer and employee.

Make sure you discuss with your attorney the laws regarding interviewing, hiring and terminating employees. Also, make it a practice to document the particulars of any discussions with employees, and add these written accounts to their personnel files.

Ideally, employees should have an annual review and all employee records should be kept in a secure place with updates to the materials as needed. Make sure your employment agreement includes a liability release/waiver, which is updated annually or whenever there's a material change that impacts the previous agreement, such as a change to a job description.

The USHJA has ample resources online, including sample contracts and checklists to get you started. Please visit the USHJA website (www.ushja.org) and click on "Best Practices" and "Resources" to access a variety of educational materials.

Classify Your Workers

Incorrect classification of employees is a problem for many employers, especially those owning businesses that include a variety of jobs and responsibilities. Knowing the difference between an employee and an independent contractor (who does not typically receive benefits and pays his own FICA taxes) is vital to the health of your business and could result in fines if your independent contractor turns out to fall into the realm of employee.

It's critically important to properly classify your employees, because under the Fair Labor Standards Act, an employee's status is determined not by his job title, but by his relationship to his employer. An independent contractor is generally someone who has control over his own time and the way in which he provides the service to you, and often provides similar services to others as well (an example is a braider or a farrier).

"If you have the right to control or direct the person, he might be an employee by definition rather than an independent contractor," explained Leone. "If you don't properly account for a worker,

you could face fines if he's later determined to be an employee. The government doesn't like it when they don't get paid."

For example, if you determine when and who an assistant trainer can teach—say, group lessons you schedule between 10 a.m. and 2 p.m.—you might be in a gray area. If, on the other hand, the assistant trainer organizes and sets up his own clients and lessons and simply uses your facility and pays you a commission, he would more likely be an independent contractor.

For more information on determining the classification of your employees, please visit the U.S. Department of Labor's website (www.dol.gov).

Insurance Is Important

Leone and Kutner both emphasized the importance of obtaining full insurance coverage, including professional liability, farm and vehicle, and workers' compensation, when establishing your business and hiring employees. Leone noted that buying an umbrella policy, which covers you, your business and your property, is often the best way to insure that you have complete coverage.

Workers' compensation insurance is another vital piece of the equation; it provides benefits to employees for injuries and illnesses arising out of and in the course of employment, also providing medical benefits and recovery support. Because states differ in their insurance coverage requirements (full-time vs. part-time employees, the size of the business, etc.) and processes, this is an important topic to discuss with an attorney familiar with the requirements of your state.

For employers, workers' compensation coverage is one of those line items that needs to be in bold at the top of the budget.

"If you don't carry workers' compensation insurance for your employees, you are subject to serious fines, and could open yourself or your business up to civil lawsuits," said Kutner. "In most states, if you carry workers' compensation coverage, your workers theoretically then give up the right to sue. It's actually a win-win for everyone."

Kutner said that classifying your workers properly is critically important when obtaining workers' compensation coverage, as well, because an injured contractor who sues and is then found to be an employee could be a serious issue. She advised employers to require independent contractors to provide proof of their liability and workers' compensation coverage, and retain it on file.

Leone concurred: "It's critical to have workers' comp if you have a barn and employ workers, because working with horses is a dangerous business. You need to protect both yourself and your workers. Medical costs are very high. When you have one of your farm workers cut off part of a finger with a saw when fixing a fence, the first question asked is, 'Do you have workers' comp?' You want to be able to say, 'Yes,' not 'I'll have to check.'"

In addition, it's important to know and understand your state's Equine Activity Liability Law and take the proper steps to follow it to the letter.

"There are only a few states left that don't have this law on the books," said Kutner. "Most have a statute that limits liability of farms and stables in the sense that the burden of proof shifts

Marketing and Branding

Separate from the nuts and bolt of your business but equally important is your marketing and branding plan. To run a successful business in today's competitive environment means establishing a website and a social marketing presence, and creating a niche within the larger equestrian world.

Ask yourself where your talents lie, and then market yourself accordingly. Do you have a special affinity for ponies? Are adult amateurs or young jumpers your favorites to teach? Do you happen to live or have established a business in an area with a niche that needs to be filled? Take advantage of your skillset and the opportunities immediately at hand, and then grow your business from there to embrace the needs you see in your community.

Once your business is established and all of your ducks are in a row, Armand Leone recommends crafting a plan to get your name out there through advertising, word-of-mouth referrals and public relations. Writing articles or blogs for local and regional publications and volunteering your time on association committees or for charity horse shows are also great for expanding your reach.

"It really helps to establish your identity early in the process," he said. "And then advertise your business based on the niche you would like to fill."

In addition, obtaining credentials within the business—such as a United States Equestrian Federation judge's or course designer's license or USHJA Trainer Certification—is a great way to expand your networking opportunities, as well as your knowledge base.

"Trainer certification is important in marketing as well as in, God forbid, liability protection," Leone said. "Being a certified trainer would be a factor in your favor if someone falls and gets injured while training or showing, and litigation follows. If a judge asks, 'Are you a certified trainer for jumping riders?', you want to be able to say 'Yes.'"

An added incentive to USHJA Trainer Certification is that many insurance companies provide discounts to certified trainers, which over the long term, adds up to substantial savings in liability coverage.

Employer Resources Checklist

- Define Your Business Type
 - C Corporation
 - Limited Liability Corporation
 - Sole Proprietorship
- Write Your Business Plan
- Draw Up Contracts
 - Employee Contract
 - Liability Waiver
 - Boarding Contract
 - Leasing Contract
 - Bill of Sale
- Define Your Employee Needs
 - Barn Workers
 - Assistant Trainer
 - Bookkeeper
 - Accountant
 - Working Students
- Analyze Your Employees' Roles
 - Salaried or Contractor
 - Full-time or Part-time
 - Insurance Requirements
 - Benefits Requirements
- Review Your State and Local Business Laws
- Review Your Federal, State and Local Taxes
- Market and Advertise

Government and Non-Profit Resources to Remember

- United States Department of Labor
<http://www.dol.gov>
- Internal Revenue Service
<https://www.irs.gov>
- United States Small Business Administration
<https://www.sba.gov>
- Trainer Certification
USHJA Certified Trainer Directory
<http://www.ushja.org/programs/tcp>

when you are engaging in an equine activity. No matter the state, though, you need to have a liability waiver signed for each person who comes on your farm and is any way involved in handling horses. Even the most basic horse business should have this process in place.”

Kutner also advised business owners to make friends with their insurance agents and to regularly keep them informed of any incidents as soon as possible.

“Most insurance companies require a liability waiver, and every time there’s an injury or incident, it’s best to call and give them notice,” she said. “If you don’t call in a reasonable time and something small becomes something larger, they could deny your coverage. Even if it’s minor, let them know and file a claim, if necessary.”

For more detailed information about liability insurance (for both professionals and non-professionals), please see the November 2015 issue of *USHJA In Stride* or the USHJA website (www.ushja.org) and click on “Best Practices” for the third article in the series.

The 800-Pound Gorilla

It’s no secret that the equine industry employs a large percentage of undocumented workers, and as a professional, you’ll likely interview potential employees who may or may not be in this country legally.

It’s sometimes difficult to determine from a person’s application or resume whether or not he or she has the proper credentials to be legally working in the United States. So it’s up to you to protect yourself if the worst-case scenario should take place, and you find out later that the person you hired turns out to be undocumented.

“If you do find yourself using or think you may have hired an undocumented worker, you’ll probably want to talk to an immigration or labor attorney in your state,” advised Leone. “It’s best to do so, because you’ll want to fully understand the risks you may be taking or have taken. Many of the laws vary by state, and depending on where your business is based, will determine what your next steps should be.”

Marianne Kutner, of Port Washington, New York, is a lifelong horseman, amateur hunter rider and an attorney practicing and consulting in the equine industry. She’s also a founding member and General Counsel for the USHJA, and consults with various equine industry organizations and competition management groups.

Armand Leone, of Leone Equestrian Law LLC, is a business professional with expertise in health care, equestrian sports and law, with strengths in strategic analysis, business development and operations. An equestrian athlete, as well, Leone served as a director on the Board of the United States Equestrian Federation and was USEF Vice President of International High Performance Programs for many years. He also served on the USEF and USHJA special task forces on governance, safety, drugs and medications, trainer certification and coach selection. Leone is co-owner of his family’s Ri-Arm Farm in Oakland, New Jersey, where he still rides and trains.