

Legal Connections



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LEGAL EXPERTISE FOR THE BUSINESS COMMUNITY

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IT'S 2021. DO YOU KNOW WHERE YOUR COMPANY LAPTOPS ARE?

When COVID-19 swept across the country in the first quarter of 2020 and then continued to surge, employers sent employees home, called them back in and sent them home again. Tracking company-owned laptops, cellphones and other tools and resources became a nightmare.

Many businesses weren't prepared to handle mass work from home situations. They may not have had enough devices to keep the essential functions of their businesses operating while supporting a significant portion of their workforce to WFH, or even move from home back to the office as the landscape changed.

As cloud storage and remote working become more commonplace, more employers are adopting a Bring Your Own Device program that expects employees will use their personal devices to conduct company business. This path, which may be the only path for many, is fraught with issues. Employers should consider drafting a BYOD program that considers



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the following:

- Who will have access to the devices being used? Assume everyone in the family will likely have access to these devices. Remote access and unique usernames and passwords can help restrict access to company information and internal storage and files.
- What are the company document storage and retention policies? Can employees save company documents to their desktop, or must all company-related documents be saved only on the company-approved sites? Should all versions of every document be saved,

or only the final version? Will employees be required to retain all documents for specific amounts of time?

- How will sensitive information be shared securely? A May 2020 Helpnet Security article noted that 51 percent of employees working remotely find security policies to be a hindrance to their productivity, which results in riskier online behavior with company-sensitive information.

- Employees using their own devices are more likely to accrue overtime. A 2014 survey noted that the average person checks their phone 150 times a day. Assuming their work email is connected to their phone, or they're connected to their employer through communication platforms like Slack or Microsoft Teams, employees may be working "after hours." The Fair Labor Standards Act requires that non-exempt employees must be paid overtime for hours worked in excess of 40 in a workweek. Further, if employers are aware that this activity is happening and do not take steps to prevent it, they're

effectively approving the overtime.

Other considerations are:

- Antivirus, theft and remote wipe policies (also known as Mobile Device Management technology).
- Use of public (non-secure) networks and wi-fi hotspots.
- Employer access to devices for monitoring and investigation purposes.
- Employee productivity expectations and assessment).
- Company expectations regarding "unapproved" software downloads (especially if the employee is accessing company servers or clouds).

For your employees, the most important consideration may be whether the company reimburses them for expenses related to BYOD. For you, what are the accounting and payroll ramifications of these decisions? ■

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LETTERS OF INTENT – THE FIRST BUILDING BLOCK

The M&A (mergers and acquisitions) market is hot right now, despite the number of businesses that are struggling because of COVID-19. Many companies have money and they are looking for deals. If you are a buyer or a seller, there are a number of factors that need to be considered before making an offer to buy or sell.

The Letter of Intent is a simple document that outlines the principal terms of the transaction. A Letter of



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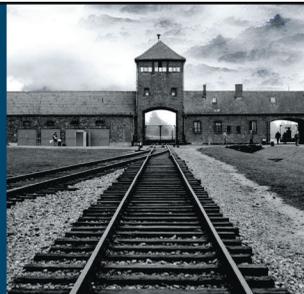
Intent, or more commonly known as a LOI, is not a binding agreement, but it is an opportunity for the buyer and seller to hammer out and negotiate the principal terms that will be incorporated into the final documentation. It is always wise to have the buyer and seller negotiate these terms without an attorney involved, and then bring the attorney(s) in to draft the documents. There is an old adage, which is more often true than not, and that is attorneys will often "kill the deal" because they get down into the weeds and over negotiate, thereby killing the

deal before it even materializes. You can have your attorney in the background advising you on the key terms, but try to keep them out of the initial negotiations.

The key terms that need to be in a LOI include: the purchase price; the terms of payment; whether it is going to be a stock sale or an asset sale; whether there will be restrictive covenants (non-competes and non-solicitations); whether the purchase price, if paid over time, will be secured and how; what assets and liabilities are excluded from the transaction; whether a consulting agreement is necessary to assist the buyer in the transition of the

business; indemnification provisions; requirements that the business will operate in a normal fashion during the pre-closing period and a date for the closing. The more terms that are agreed upon in the beginning of the process and are incorporated into the LOI, the better chance you will have closing the transaction and keeping your attorneys' fees and expenses at a minimum. ■

Hitler's Courts:
BETRAYAL OF THE
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FEBRUARY 18, 2021
2:00pm-4:30pm on Zoom

Presenters are bestselling author and Emmy Award-nominated producer Joshua M. Greene (left) and internationally known attorney Raymond Brown (right). 2.5 CLE Hours. **Not just for lawyers!**



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