

Balancing Family and Business

Sarah Sawyer: Welcome to this week's OK at Work with myself, Sarah Sawyer, my colleague Russell Berger, both attorneys at Offit Kurman, and today we are talking about business relationships in the context of family members, significant others doing business with people who you might have a heightened sense of trust with to begin with.

So a lot of times obviously especially in middle market owner ran and operated businesses and in that space, there might be a lot of situations where you're in business with a family member, whether it be, a spouse or a girl, or a boyfriend, or nieces and nephews, brothers, sisters, kids because it can be a good thing in some circumstances, obviously to have a family business.

It's a really common practice in a lot of industries and in a lot of businesses. However, that means you might be coming in a little blind. Having some more blind spots and some issues 'cause you've already got [00:01:00] this heightened sense of trust and their family and there's loyalty. But as anyone who is listening, who has a family knows, sometimes things can go awry or there might be disagreements or there might be challenges, and sometimes that's even more challenging as it relates to your family versus an employee who you're not related to.

So what are some things that business owners should be thinking about Russell as it relates to this kind of category of business relationship?

Russell Berger: Yeah, when We talk about family of business, I think, the problem that creates is when, the balance between family and business gets outta whack and it becomes more about family than the business. And not to say that shouldn't have family interactions in a business setting at all, far from it. But what you need to remember if you do, is that it's still a business. It's still subject to a bunch of rules and risks and laws.

And there still needs to be governance and control in the business setting. And I think whether it's a family [00:02:00] member or not, I think that's an important thing to get on the same page with. If you're gonna have partners, at an ownership level, you're gonna have partners or co-owners in the business. We all agree, we should probably have some good ground rules for how we're gonna resolve disputes and what our vision is for this organization.

And you know what? Once we do it, we should put an operating agreement together that says all that. And it says if we don't agree this is how we're gonna resolve it, or if someone wants to leave, this is how we're gonna buy them out. You can solve a lot of problems upfront before there's a disagreement and when everyone's pleasant and agreeable and particularly in a family business, if you can do that and then in a way that gets you most of the way there, you save a lot of acrimony and hardship to it. We would say this to a business, any business owner that takes on, co-owners that, it's best to have an operating agreement. It's best to spell this stuff out.

It's just better business. It's more efficient. But it's also better, emotionally to have an off ramp that's well-defined so the fight doesn't spiral out. And then I think it's something very similar when you're [00:03:00] hiring, there are some laws that allow you to hire your children and not necessarily pay them the way you would pay any other employee.

But it doesn't apply to everyone who could be Sarah as you define, broadly, like family could meet a lot of different things and there aren't exceptions are written into the law for all of them.

And you might think your risk is low, like this is family. They're not gonna sue me, they're happy to get some money and pay 'em under the table.

And, for a few odd jobs here and there like maybe that's a perfectly reasonable risk to take. But when you're really employing someone and they're really working in the business and maybe even developing a sense of ownership mentality because they see it as the family business, even if they're not an owner.

It's really important to be clear and upfront about what this isn't, how we're doing it, how we're complying with the law, what steps we're taking. I think those are all really important conversations to have and if appropriate agreements to put in place upfront.

Sarah Sawyer: Yeah, I think from an operations perspective as well, if you've got a mix of family and folks who are not family operating the business having these things in place [00:04:00] can also have a practical impact around making sure that people know their lane just like any other employees, job descriptions, understanding what their roles are, and that can be helpful in the day-to-day operation to avoid conflict and challenges that any normal human might have, regardless if they're your family member or not. And also maybe help if you are employing other people that are not family members, that everyone has a good idea of how everyone's operating, what people's roles are, you prevent any resentment that might happen between those kind of groups of people will say.

And it's also a good just housekeeping item as well. This is another context I see has come up in, is when a business goes to sell and they've got a bunch of employees who maybe are subject to restrictive covenants and confidentiality and all of these things around the secret sauce or whatever it might be.

And then we have a couple family employees who haven't signed anything. Right. So, and they might be key to the business. And so it's just good from just an operations and housekeeping aspect as well, to be thinking about those things, even when they feel carved out in your mind as [00:05:00] separate because they are family members. So that's another area, I see it often.

Russell Berger: Yeah. And one thing to pull out what you said that I thought was a really good point is I think you said role clarity. Which I think is great. I mean, Obviously again, I think it's great for any business to be clear about who's doing what, what are the workflows, how do these departments work together?

But the more you can plainly state that, calmly, objectively not, there's not a lot of emotion. Like, This is your job, this is your job, this is how you work together. The more you can do that, the easier it gets to manage people. And particularly when those people are family members it can help to deescalate the tensions.

Sarah Sawyer: Okay. Well thanks Russell. We'll see you next time.

Russell Berger: Thanks, Sarah.