Employed with a side of startup

by Jason Cohen on March 8, 2010

Most people start their first company while they still have a day job.

It makes sense: You don't need loans, and you don't need funding. If you "fail" all you've lost is time, but considering the fun, the stories, and everything you'll have learned, that's hardly a failure.

You just need to give up all your free time which, if you've caught the "founders" bug, is A-OK with you.

"You work hard, Tim, but I'm worried you're not *playing* hard enough."

But you've also placed yourself in a hazardous, potentially legally ambiguous situation. If managed improperly, you're unnecessarily risking lawsuits and worse.

I've been on both sides of the table: I've done a startup while working and I've employed people who either were or are very capable of having their own startup on the side. And I've known people **who were sued** because of it, and not all of them won.

Here are my tips for how to pull this off.

IANAL

Ho hum, hedging is so tedious. But I have to say it: I Am Not A Lawyer. None of this is legal advice. If you do or don't do anything listed here and anything bad happens, it's not my fault.

If anything good happens, I'm thrilled and honored to accept your munificent cash donation.

Pick a business that can thrive within your constraints

Your side venture has constraints a "normal" business doesn't have:

1. You can't answer the phone during normal business hours.
2. You can't answer emails during normal business hours.
3. You can't afford to hire three developers to add features and bugs.
4. You have to work in fits and spurts.

Your natural tendency is to fight these constraints, but that's the wrong approach. For example, you know that to avoid social media shitstorms you're supposed to have stupendous customer service, so you claim as much on your website. But then you don't have a phone number and emails sent to you at 10:00am don't get answered until that night (which means they're not viewed until the following day).

That's called a "missed expectation." It's also called pissing in the wind—it's just going to come right back at you.

The right attitude is not only to work inside your constraints, but to turn them into competitive advantages!

For example, your regular income affords you the luxury of underpricing your service. So if anyone complains that there's no phone number, you can just point out that for $5/mo you can't afford a phone staff.

As another example, pick a product in which simplicity and having very few features is an advantage. "We do only one thing and we do it better than anyone" is a great marketing slogan. You don't have the time to make a Microsoft Excel knock-off, so don't!

Embrace slow growth

We all have dreams of stratospheric growth, whether it's hoping the next blog post will get 267 votes on Hacker News and double your RSS subscribers, or hoping that the advent of release v1.1 will set the blogosphere ablaze.

Good work if you can get it, but it's not a "plan," especially not for a business you're running in your spare time. In fact, any bootstrapped company should be aiming for slow, consistent growth rather than explosive growth.

This is not a bad thing! Slow growth maximizes your chance for success. Slow means your success is not dependent on some unlikely, massive event that's totally outside your control. Slow means you can change drastically during the early days without sinking the company. You have a job, so you don't require explosive growth to be successful anyway.

Remember, your immediate goal isn't to make millions of dollars, it's to **build a business just solid enough to quit your day job**. It's not quitting your job, taking a course from a "top online MBA programs" and thinking your business will pull in revenue. It really means enough profits that you can already live (frugally) off the company. Or it might mean you have enough customers to have "proved" you have a viable business model, so now you can raise money with sensible terms.

Don't lie at work

The best way to avoid a lawsuit is to prove that your employer knows you have a side project.

I know, you really *really* want to ignore me and operate in secret. You're afraid to tell them because they're might do something—fire you, distrust you, or look at you funny at lunch.

Yes, that might happen. But what's worse—one of those things or a lawsuit? If you don't think they'll sue you, then you shouldn't be afraid of telling them! They are going to find out anyway. You need to tell them on your own terms.

I've always told my employer, and it always worked out for the best.
Here are those stories.

How do you tell them? Write a simple document explaining what you're doing. Here's my template:

> To Whom it may Concern:
>
> I have a hobby which does not in any way conflict with work. I'm writing this letter to make sure you're aware of it so there's no misunderstanding.
>
> My hobby is ….
>
> I work on my hobby only at home and on my own time; it is not in conflict with my employee agreement. I own it; [Company] has no ownership or rights to it. Like any hobby, it could generate a small amount of income.
>
> Although I don't anticipate it, I understand that if my hobby ever became in conflict with my job that it's my responsibility to notify you immediately.
>
> Thank you.

Then you get this letter signed by someone with *authority*.** "Authority" means someone who can legally represent the company. This will of course depend on the company, but typically C*Os or the company's legal council is a good bet.

Getting a supportive boss to sign it isn't good enough. He can't speak for the company.

Check your employment agreement

There's a phrase in the template letter about your side business not conflicting with your employment agreement. Is that true? It'd better be.

Employment agreements are typically biased in favor of the employer, sometimes with outrageous clauses saying that anything you do, even at home and on your own time and unrelated to anything at work, is automatically owned by the company, *and* that furthermore you're responsible for identifying and reporting on those things, *and* if you don't do all of the above there's *no limit* to the damage you could have caused.

Courts have thrown out some of these egregious contracts, but that's unusual, and you can't depend on that. You don't want to go to court at all. Besides, you signed it.

Read over your agreement and make sure it's legal to have the side business. If it isn't, you *must* write a letter like the one above *specifically stating* that this is a valid exception to your employment agreement.

Don't use company property or Internet, *for reals

Another clause in most employment agreements is that anything you do physically at work, or on software and equipment owned by the company (e.g. laptop, customer lists, Photoshop) is automatically the property of the company.

This clause is fair. If your project is really *on the side*, you have no business doing business at work. If your project is really *yours alone*, it cannot be assisted by a company laptop, company software, or company Internet connection.

When it comes to company property, be paranoid. **Assume Big Brother is watching.** Assume every laptop has a secret program that records all keystrokes, mouse clicks, screen shots, web sites, and emails you read or write. Assume everything you do on the Internet is recorded, cataloged, tagged, and monitored continuously by a methamphetamine-powered slave-army.

Now I realize you're super clever. You want to sneak in some tech support emails during the day, so you use a cocktail of Anonymizer plus GMail-over-SSL to confound the network admin. Because of course covering up your activity is a sure sign you're doing something legal…

Even that is not enough. If they decide to sue, they get to look through your email records (it's called "discovery"). Then they have 100 emails you sent during work hours. **You lose.**

Get the picture? Just don't do it.

Time management is critical

I'm naturally awful at personal time management. I procrastinate, I'm disorganized, and if I'm not careful I'll burn two hours ROTFL at FailBlog with nothing to show for it but tears of laughter puddled under my keyboard. Which maybe would be fine if I'd won a load of money at an online casino dawdling around playing blackjack. Then at least I'd have money to show for it.

A startup already generates an infinite amount of work. It takes all your time, which for you is 40 hours/week less than it ought to be. You can't afford to waste time, whether that means bad habits or working on the wrong tasks.

There's no silver bullet—workflow is a personal matter—but here are some techniques to get you started:

- Check email infrequently.
- Inbox Zero—Processing email until nothing remains has both psychological and practical advantages.

- <u>GTD</u> (Getting Things Done)—This technique literally changed my life. Few people implement 100% of this system, but everyone can take away a trick or two that makes them more productive.
- <u>Work in sprints</u>—Short, focussed bursts of activity eliminate the surprisingly large waste that comes from context-switching and interrupt-driven behavior.
- If you don't sleep enough, your productivity plummets. Trading an hour of sleep for an hour of coding *is never efficient*.

- Use a tool like <u>RescueTime</u> (free!) to empirically discover where you're spending time; the waste becomes clear. P.S. Tony Wright, founder of RescueTime, started that company while employed and <u>wrote about what he learned</u>.
- <u>Optimize slowest tasks first</u>—Identifying and optimizing the slowest tasks increases your overall productivity more than you think.