

# Business Startup



Presented by the University of  
Hawaii's GoFarm AgBusiness Program

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## What are we discussing today?

- Legal structures
- Selecting a name
- Business registration
- Business partners
- Business resources
- Employee requirements

# Choosing a Business Entity Type (Legal Structure)

- Determine:
  - How many owners will there be?
    - One owner: sole proprietorship, corporation, or LLC
    - More than one owner: partnership, corporation, or LLC
  - Who will manage/control the business?
    - Who will make business decisions and control the operation?
    - Will you have investors?
    - Will all owners have decision making powers?
  - What kind of liability protection do you want?
    - Sole proprietorships and partnerships have unlimited personal liability for business debt or lawsuits against the company.
    - The more dangerous or risky the activity that your business will engage in, the less personal liability you want to have.
  - How do you want to be taxed?
    - Business owners of sole proprietorships, partnerships and LLCs must report and pay taxes on all net profits from their business, even if they take no money out of the business during the tax year.

## Sole Proprietorship

- Easiest form of doing business.
- In Hawaii, only a general excise tax license is required.
- Trade Name registration is optional.
- Contracts are void after owner's death.
- **Number of Owners:** One
- **Management:** Owner
- **Liability:**
  - Unlimited personal liability
  - Protection only through insurance
- **Tax:**
  - Will pay self-employment tax.
  - May pay estimated tax.
  - No separate tax return.

## General Partnership

- Easy to form.
- **Number of Owners:** Two or more self-employed owners called “partners”.
- **Management:** Equal control
- **Liability:**
  - Unlimited personal liability
  - Jointly and severally liable for debts of business
  - Protection only through insurance
- **Tax:**
  - Partnership files an informational return but does not pay tax.
  - Each partner includes his/her share of the partnership's income or loss on personal tax return.
  - Owner will pay self-employment tax.
  - Owner may pay estimated tax.
- Partnership agreement should be established to outline the management and operation of the business.

## S Corporation

- ◉ **Number of Owners:** Shareholders own company. Limited to 75.
- ◉ **Management:** Board of directors.
- ◉ **Liability:**
  - ◉ Limited to their investment in stock.
- ◉ **Tax:**
  - ◉ Each shareholder includes his/her share of the corporation's income or loss on personal tax return.
  - ◉ Owner may pay estimated tax.

# Limited Liability Corporation (LLC)

- Very flexible.
- **Number of Owners:** One or more persons.
- **Management:** Specified in operation agreement and can be managed by member of the LLC or managers.
- **Liability:**
  - Limited to their investment in LLC.
- **Tax:**
  - Each shareholder includes his/her share of the corporation's income or loss on personal tax return.
  - Owner will pay self-employment tax.
  - Owner may pay estimated tax.

## Guide to Choosing the Right Legal Form for Your Business

**Guide to Choosing the Right Legal Form for Your Business** (source: State of Hawaii: Department of Commerce and Consumer Affairs)

|  | Sole Proprietorship  | General Partnership  | Corporation  | Sub-S Corporation   | Limited Liability Company   |
|--|--|--|--|---|---|
| <b>Ownership</b>   | By a single individual   | By two or more persons   | By unlimited number of shareholders  | By shareholders: number of shareholders limited to 75                           | 1 or more persons or entities (except certain providers of professional services and law firms)         |
| <b>Business Registration (State Department of Commerce and Consumer Affairs)</b> | Not required, unless public notice of trade name is desired  | Within 30 days after formation, file certificate of limited or general partnership   | File Articles of Incorporation. For non-Hawai'i corporations, file Application for Certificate of Authority and Certificate of Good Standing | Same as regular corporation   | File Articles of Organization. For non-Hawai'i companies, file Application for Certificate of Authority |
| <b>Management</b>  | Entirely in hands of owner   | By general partners  | Corporation's board of directors   | Same as regular corporation   | Member-managed, or manager-managed  |
| <b>Life</b>  | Will terminate with death or disability of owner   | Generally for a specific, agreed-upon term. Partnership may be terminated by death, withdrawal, insolvency, or legal disability of a general partner                     | Unlimited, unless by state law or charter  | Same as regular corporation   | May be for a specific agreed-upon time, or at will  |
| <b>Liability</b>   | Owner liability unlimited. Personal property can be attached by creditors to settle business debts | Unlimited for general partners. General partners are jointly and severally liable for obligations of partnership. Limited partner's liability limited to amount invested | Shareholders' liability limited to their investment in corporation stock   | Same as regular corporation   | Limited to amount of investment, or as specified in Articles of Organization                            |
| <b>Taxation</b>  | Owner taxed on business profits whether or not distributed   | Partners taxed on share of partnership income whether or not distributed   | Corporation taxed on taxable income, whether or not distributed to shareholders  | Shareholders taxed on taxable income of corporation, whether or not distributed | Members taxed on share of company income whether or not distributed                                     |



## Select Your Company Name

- In Hawaii, business registration is NOT required for sole proprietorships. However, sole proprietorship can register to provide notice to others that you are claiming the rights to use a trade name.
- Business registration does not mean you own the name.
- Use of name gives more ownership rights than registration only.
- Be sure someone else is not registered to do business with your proposed business name:
  - Do not use a name that is likely to be confused with the name of a competing business.
  - Conduct a name search
    - Do a web search
    - Check the Hawaii State business database: <http://hbe.ehawaii.gov/documents/search.html>
    - Check the availability of a domain name: <http://instantdomainsearch.com/>
    - Check the Hawaii tax licenses website: <https://dotax.ehawaii.gov/tls/app>

## Using Hawaii Business Express

- Free Online Service
- Step by Step Instructions
- Forms Readily Available
- Answer a few questions once versus filling out multiple forms with the same information.
- <https://hbe.ehawaii.gov/BizEx/home.eb>
  - Create an account
  - Ensure you have/know the required items before you start
  - Use Multi-Agency Wizard to create a new business
- Required forms for each business type (mail/walk-in):  
<http://hawaii.gov/dcca/breg/registration/registration-form-info.html/>

## Before You Register

- To begin the process you will need to have/know the following information about the business entity you would like to register:
  - The business entity type. i.e., Corporation, Limited Liability Company, Sole Proprietorship, etc.
  - Date the new business is going to start in Hawai'i.
  - Date of the first payroll in Hawai'i (if applicable).
  - Names, addresses, phone numbers and FEIN's or SSN's of proprietors, partners, corporate officers, LLC members and registered agent.
  - The business location(s).
  - Brief description of the business activity.
  - Name and telephone number of person submitting the registration.
  - Form of payment (Visa, Mastercard, Discover's Card, and American Express).
  - Many businesses will need to obtain a Federal Employer Identification Number (FEIN) from the Internal Revenue Service. This is true if you are creating a corporation, limited liability company, limited partnership, limited liability partnership, OR a sole proprietorship with employees.

# Registering Your LLC

- Register with the State:
  - Basic Business Application (Form BB-1)
    - Filing will provide you with a State Taxpayer ID Number which you will use to pay General Excise Tax
  - Articles of Organization for LLC (Form LLC-1)
- Register for Federal Employer's Identification Number (FEIN) with IRS
- If more than one member or manager, create an Operating Agreement for the company (does not require submission to the state)
  - See Outline for Operating Agreement and/or consult attorney for assistance
- Annual LLC Report (Form C5)

## Federal Employer's Identification Number (FEIN)

- A federal employer's identification number (FEIN), is a number assigned solely to your business by the IRS. Your FEIN is used to identify your business to several federal agencies responsible for the regulation of business.
- How to determine if you need a FEIN:
  - <http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Do-You-Need-an-EIN>
  - Most businesses (including LLCs) are required to have one.
  - Most banks require one to open a bank account.
- Apply for a FEIN online (will get FEIN immediately):
  - <https://sa2.www4.irs.gov/modiein/individual/index.jsp>
- Or mail form (processing takes approx. 4 weeks):
  - [http://www.irs.gov/file\\_source/pub/irs-pdf/fss4.pdf](http://www.irs.gov/file_source/pub/irs-pdf/fss4.pdf)

# Requirements for Employers

- Determine if you have an employee or independent contractor.
- In determining whether the person providing service is an employee or an independent contractor, all information that provides evidence of the degree of control and independence must be considered. This information falls into three categories:
  - Behavioral: Does the company control or have the right to control what the worker does and how the worker does his or her job?
  - Financial: Are the business aspects of the worker's job controlled by the payer? (these include things like how worker is paid, whether expenses are reimbursed, who provides tools/supplies, etc.)
  - Type of Relationship: Are there written contracts or employee type benefits (i.e. pension plan, insurance, vacation pay, etc.)? Will the relationship continue and is the work performed a key aspect of the business?

# Requirements for Employers

- There are a number of federal and state laws that employers must follow when hiring employees.
  - Citizenship requirements
  - Wages
  - Taxes and Insurance
  - Workers' Compensation
  - Medical Benefits and Safe Workplace Requirements
  - Notices
  - Additional Government Numbers
    - State Withholding Number (Department of Taxation)
    - Unemployment Insurance Number (Department of Labor)
    - Both can be obtained when applying using the Business Express Wizard
- May consider an employee leasing firm

## Business Partners

- Banker
  - Open a checking account.
  - Sample requirements for sole proprietorship: GET, FEIN or SSN, and evidence of Business Registration.
  - Sample requirements for LLC: articles of organization, GET, FEIN, evidence of Business Registration, and Operating Agreement (if more than one member/manager).
  - Can assist with financing.
  - Can assist with products or services that are beneficial to your business.
- Accountant
  - Bookkeeping and Tax Advice
  - Can provide guidance on business ownership structure
  - Can assist with paying required taxes (how much and when)
  - Can provide guidance on your accounting system and ensure you are prepared for year-end financial reporting.



## Business Partners

- Insurance Agent
  - Insurance can help protect you from the risks involved in your business.
  - Can assist you determine your risk and insurance needs:
    - Liability Insurance
    - Property Insurance
    - Worker's Compensation Insurance (if you have employees)
    - Other: Business Auto Insurance, Medical, Life
- Attorney
  - Can provide legal guidance on business ownership structure and risk aversion.
  - Can assist in the development of legal documents.

## Business Resources

- Business Action Center: 586-2545  
<http://hawaii.gov/dcca/bac>
- Business Express: live chat available  
<https://hbe.ehawaii.gov/BizEx/home.eb>
- Small Business Development Center:  
<http://www.hawaii-sbdc.org/>
- Small Business Administration:  
<http://archive.sba.gov/localresources/district/hi/index.html>
- Guide to Choosing the Right Legal Form for your Business  
[http://files.hawaii.gov/dcca/bac/business\\_entity\\_comparison\\_chart.pdf](http://files.hawaii.gov/dcca/bac/business_entity_comparison_chart.pdf)

## Business Resources

- ◉ Department of Taxation:  
[http://www.state.hi.us/tax/a7\\_faq.htm#get](http://www.state.hi.us/tax/a7_faq.htm#get)
- ◉ Employer FAQs:  
[http://hawaii.gov/labor/ui/pdf/ER\\_FAQ\\_01-2009.pdf](http://hawaii.gov/labor/ui/pdf/ER_FAQ_01-2009.pdf)
- ◉ GoFarm AgBusiness Program: 956-3530  
<https://gofarmhawaii.org/resources/>
  - Hawaii Agribusiness Guidebook
  - Resources List
  - Adding Value Hawaii Guide
  - Agritourism Guidebook
  - Toward Sustainable Agriculture
  - Hawaii New Farmer Guidebook