

Labor: 5 ways to protect your company when a key employee departs

In this competitive business world, it's crucial to properly handle an employee's departure, especially to a competitor

By Jason Tremblay
January 23, 2012

Employees frequently resign to work for competitors. This is likely to happen irrespective of whether they have signed a restrictive covenant. Therefore, in this competitive business world, it is important for all companies to know what steps to take when an employee decides to leave, especially in circumstances where he or she leaves to work for a competitor.

1. Prevent further access to company information

Once an employee advises the company of their departure, it is critical to assume the worse and that the employee may engage in conduct that is harmful to the company. After all, there is a reason why he or she is leaving the company. The employee should be immediately relieved of any duties that would expose the employee to confidential information or the company's customers. Passwords and email accounts should be disabled. The employee should be restricted from access to areas where confidential information is kept. The company also should request that the employee return all company-owned equipment such as laptops, cell phones or PDAs that would contain confidential business information, as well as all documents received from or generated during his or her employment.

2. Preserve electronic evidence

Departing employees have also been known to misappropriate the company's trade secrets or confidential information. In certain instances, such conduct can be catastrophic to the company. Therefore, it is critical that employers preserve all evidence of the employee's pre-resignation activities. This includes maintaining a log of all copying and downloading of company information or communications during a reasonable time prior to the employee's departure.

Electronic evidence plays a prominent role in these circumstances, so a former employee's computer or handheld device is often the best place to start. Computer forensic experts can almost always determine whether inappropriate conduct occurred by the departing employee. However, keep in mind that careless efforts to extract information from a computer can compromise critical electronic evidence. In fact, the well-intentioned manager who simply logs onto a former employee's computer to investigate their conduct could render the electronic evidence useless and irretrievable if done improperly. Therefore, in circumstances where misconduct is potentially at issue, it is recommended that a departing employee's computer be immediately disconnected from both the power and network and preserved so that a professional forensic expert can analyze the computer and properly extract the necessary data and information.

3. Determine what confidential information the employee knew

A company should take steps to try and determine what trade secrets or confidential information the departing employee may have in his or her possession. For example, was the employee present at meetings where company strategy was discussed? An employer should further determine whether there is any documentation confirming the employee's presence or if any confidential documents were provided

that the employee may still have in his or her possession. If so, the employer should request those documents back and confirm that the employee has no more copies.

4. Contact customers about the employee's departure

Additionally, when it comes to maintaining the customers serviced by the departing employee, a company may want to document in some fashion what customers the employee worked with so that the employer has an idea of what customers to be concerned about after that the employee departs. And don't forget to reach out to those customers to advise them of the employee's departure, and to let them know who at the company will now be handling their account.

5. Interview co-workers

Finally, departing employees often talk to their co-workers regarding their plans to leave the company. In these conversations, the departing employee may share their post-employment intentions, reveal prior misconduct or perhaps attempt to recruit co-workers to the detriment of the company. Interviewing co-workers, therefore, could reveal a treasure trove of helpful information to the employer to protect itself and to assert any contractual rights it may have vis-a-vis the departing employee.

About the Author



Jason Tremblay

E. Jason Tremblay is a partner in the labor & employment practice at Arnstein & Lehr LLP. He represents a diverse client base on a wide range of labor and employment matters critical to the evolving workplace, and can be reached at 312.876.6676 or ejtremblay@arnstein.com.