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I’m Out! 7 Things to Do When a Key Employee Leaves

Employment and Labor

Key employees are highly valued, usually highly compensated, and have key decision-making roles in the organization. Their position and seniority also gives them access to deeply sensitive corporate information; they know where the bodies are buried! Thus, it is important to take measured steps to protect the company upon notice of the voluntary departure of a key employee.

1. Take stock

Take a sober assessment of all potential risks the departure poses. This should be done quickly since it will impact the ideal timing and nature of the employee's departure. For example, if there is a concern that the employee may attempt to recruit other valued employees or take corporate information, immediate termination may be warranted. In taking stock, consider the following:

- The employee's level of seniority;
- Sensitive projects the employee is involved in;
- The extent to which the employee has access to sensitive company information;
- Whether the employee is leaving for a competitor company;
- The extent to which the employee may attempt to recruit other employees; and,
- The employee's character and integrity.

2. Check the HR file

While you may be able to persuade and exiting employee to sign certain agreements, the ideal time to populate the HR file with protective documents is at the beginning of the employment relationship.

Confidentiality agreement
If the employee signed a confidentiality agreement, review the term of confidentiality, particularly as it applies to the period after the employee's termination. Also review the scope; at a minimum, the agreement should require the employee to keep company information confidential. In addition, the employee may be prohibited from using the company's intellectual property and confidential information for anything other than its present purposes.

Non-compete agreement
A more controversial but powerful tool is the non-compete agreement, which prohibits the employee from seeking employment with a competitor or in the same trade for a period of time. The treatment of non-compete agreements is state-specific, so before you begin wielding it in triumph, be sure to review the applicable state requirements — particularly if the employee is relocating to a new state.

Non-solicitation agreement
Non-solicitation agreements may be enforceable even in states that disallow non-compete agreements. Take stock of whether your departing employee has or is likely to attempt to lure away current employees and be prepared to take action.

3. Check the corporate pulse

Assess the impact of the key employee's departure on the organization. The departure of a senior salesperson may have a pied piper effect on members of that individual's team. The departure of a CEO often disrupts projects for which the CEO was the primary champion. It also creates uncertainty which may lead to the departure of other employees, especially if the organization does not have a smooth succession plan in place. The reaction of external shareholders, markets, and other stakeholders should be taken into account, and corporate communications must be aligned to deliver consistent and reassuring messaging.

4. Mine the data

Particularly for key employees with access to critical data, consider asking your information technology department to see whether the employee has been forwarding or downloading company documents in the months before departure. A registry examination report might also be useful; it provides a history of every device that has been plugged into a user’s computer. Used in conjunction with other tools, an employer can determine whether the employee downloaded certain data and to what device.

5. Consider a transition plan

The employee’s cooperation may be needed to affect an orderly transition of responsibilities to her replacement or to employees who will execute the departing employee’s functions on an interim basis. A key consideration in the potential success of a transition plan is the employee’s interest, character, and integrity. An employer cannot force an outgoing employee to cooperate in a transition plan, so success necessarily comes at the intersection of the employee’s willingness and the corporation’s need.

A transition plan for an outgoing employee may be structured so that the employee commits to remaining with the organization for a set period of weeks or months, during which time the employee completes specific activities and objectives to ensure a smooth transition. At the end of the transition period, the employee may be paid an additional sum as a bonus.

6. Conduct an exit interview

It may sound scary, tedious, and potentially acrimonious — especially for an employee who departs voluntarily. However, the exit interview is valuable for the employer to:

- Understand why the key employee is leaving;
- Find out where the employee is going;
- Determine whether any other employees might be at risk of departing;
- Determine whether the key employee has notified customers and other stakeholders about her departure;
- Identify all company property in the employee’s possession that must be surrendered upon departure; and,
- Remind the employee of her confidentiality, non-solicitation, and non-compete obligations.

7. Take immediate action if warranted

Where risk to the company is high, immediate termination may be warranted. In its most aggressive form, this may require immediately disabling all employee access to corporate physical and intangible assets, technologies, and systems. Security may need to escort the employee from the premises and employees alerted to immediately notify HR or the police if the former employee is seen on the premises. The employee’s belongings may be packed up by HR and mailed to the employee.

If the employee is going to a competitor in violation of a non-compete agreement, the company may choose to file a temporary restraining order while the parties litigate over the terms of the agreement.

Every key employee departure is different. Take a quick but deliberate approach and choose the appropriate tools for the situation.

Sidebar References

Retaining key employees

The real reason good employees quit

35 tactics to keep employees from quitting

6 mistakes that cost leaders

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