

LEGAL-EASE



Protecting Your Company From Rogue Ex-Employees

If you've been reading any trade publications recently, you may have run across a number of articles discussing a recent California Supreme Court decision regarding covenants not to compete. I would be surprised if you could make it past all the legal mumbo-jumbo – a description of the facts of the case, the California statute involved, etc., etc. I've read them myself, and it's difficult for **me** not to fall asleep! If you made it to the end of any of them, you probably came away, at best, with some vague legal advice about protecting your "trade secrets."

As a public service from your "Association business lawyer," here is some slightly more practical advice on how best to protect yourself from an employee who might leave your company and try to start soliciting your customers:

1. It is true that you should protect your trade secrets, including your customer list. So if you keep your customer list on a computer, as most companies now do, make sure it (along with all your sensitive company records, including financial information) is properly password-protected and open to access only by trusted company employees with a "need to know." (**By the way, don't forget to make sure you have a backup that is kept in a safe place, off site if possible.**)

2. Make sure you have proper, written contracts with your customers. If you are in the middle of a fixed contract term with a customer, and an ex-employee (or a competitor) tries to lure away the business, they could be guilty of the far more serious offense of "intentional interference with contractual relationships" and subject to a lawsuit on those grounds, including possible punitive damages.

3. If you are a small company owner, the most practical advice is to make sure that, if possible, **you** are the primary point of contact with your customers. Keep good customer relationships – if necessary, keep a customer happy by giving in on a small dispute, under the principle of "Don't sweat the small stuff!" They will come to see **you** as their trusted security professional. If someone else tries to solicit their business away, it will be far more difficult if you have that "personal relationship" with the customer, and they are, in effect, the stranger.

4. Have either a contract with your employees, or at least a policy each one signs upon becoming an employee, that they will keep the company's proprietary information strictly confidential and neither share it with others or use it for their own benefit.

By following these steps, you can at least make it more difficult for someone to capitalize on the business you worked so hard to build up.

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