Protections Available to Employers When Employees Leave

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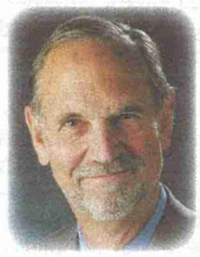

There are numerous ways that an employer can protect itself if it has concerns that an employee will harm the company upon departure.

1. Restrictive Agreements.

Prior to employment, upon initial employment or midterm in employment employees should be required to sign a confidentiality/nondisclosure agreement and a restriction against soliciting customers or co-workers. In some, but not all, states, if agreements are required mid-term there must be consideration beyond continued employment, such as a promotion.

2. Protecting Confidential Information.

There can be physical controls (restricted access on a computer, lock and key if it is a hard copy document, restricted access to the locations where the document is).There can be notice access restriction by marking documents confidential, but it is important to confine confidentiality designations to important business documents not generally available to the public, such as financial data, customer information and business arrangements with manufacturers, vendors, clients and suppliers. Prudent employers will have regular reminders. In highly confidential meetings employees can be required to turn the written materials in for shredding after the meeting. Employers should be judicious internally about what information is shared and with whom the information is shared.

3. Check Computers.

A good IT manager can check traffic on the computer assigned to an employee in the few days before the employee leaves to detect whether the computer has been accessed for non-business purposes and whether the employee has installed a cloud service, drop box, Google documents or some other drag and drop mechanism to transfer files and company information to a personal computer.

4. Terminate Computer Access.

The company should cut off the employee's access to the computer system at an appropriate time. If employees are formally told that they do not have access any further, then a federal statute—the Computer Fraud and Abuse Act—may be triggered more readily. If the employee had ongoing authorization to access the company computer but exceeded that authority, the courts have not been particularly helpful to employers. An employer is in a better position if it can show that authorization was not present when the employee continued to access the system or tampered with or destroyed equipment.

5. Exit Interviews.

Employers do not have to do exit interviews but this can be good practice. During the exit interview the employer can ask the employee to sign an acknowledgment document confirming that the employee has reviewed the confidentiality and non-solicitation agreement previously signed by the employee. It is also important to provide the employee with the documents he or she signed during the course of employment. In addition, it is prudent to prepare a checklist that the employee would sign off on that has a list of topics discussed.

The employee will then be blocked from arguing that he or she never had notice of these responsibilities. If the employee does sign off on a document and then it turns out that the employee had been lying, there is a basis for a possible fraud claim. On the other hand, if an employee refuses to sign an acknowledgment or checklist, this will be an early warning sign that the employee has something to hide.

6. Inspection of Employee's Office.

In circumstances where there is some concern that an employee may be leaving and planning to take things, there is nothing wrong with going into the employee's office with a camera and taking pictures of the desk and bookcases and the like or even preparing a more comprehensive inventory. Employers should confirm their internal policies that this kind of review of employee materials is appropriate. At a minimum, employees should not be allowed to clear out their own offices without having somebody present.

7. Examination of Personal Electronic Devices.

To the extent that employees have had information on various devices even if it's their own devices, a reminder document should be given to the employee upon departure to put them on notice that there is an expectation that these devices will be checked. If employees are going to be allowed to keep any devices (the laptop they used, a telephone) or if they have used personal cell phones or personal computers, the company should ask to have its IT professionals check the devices.

8. Review Logs of Restricted Areas.

Some businesses require that employees have to badge into areas of the building or have to badge in to gain access to the building at all. It may be appropriate to pull a report prior to the employee's departure to determine whether or not the employee has been on site at odd or unexpected hours.

9. Use Care in Employee Reviews.

Employers should be careful not to disclose confidential information in an employee performance review because the employee has a right to obtain his or her personnel records going forward. There should be ways to talk about performance without disclosing confidential information.

10. Patent and Copyright Protection.

Pay attention to the protections of patent and copyright. Very few employers copyright their work but in some areas of highly sensitive or innovative material, these protections should be utilized. Also consider requiring employees who are assigned to prepare or submit ideas or other creative documents to sign work-for-hire agreements that assign right, title, and interest to any copyright to the company.

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How to Leverage Your Company with CFO In-sourcing

Provided by ProCFO, LLC

I have a small company. Do I need or can I afford a CFO? We hear this question from many entrepreneurs, but many are unaware of the value a CFO can bring to the table.

What does a CFO do? Do I need a CFO in my business? Can I afford a CFO? With the financial complexities in today's business world, these are questions that owners and operators of companies encounter on a daily basis. Today, financial analysis, compliance and reporting is paramount.

The CFO In-sourcing model is rising in popularity within the marketplace for small-to-medium-sized companies. Business owners and CEOs recognize they need a layer of financial sophistication, but may be too early in their growth to afford a CFO on a full-time basis. It has been said that hiring an in-house CFO does not become essential until a tipping point that may occur between $10M and $20M in revenue.

Most businesses utilize a bookkeeper or bookkeeping service. A bookkeeper is responsible for recording day-to-day financial transactions in the accounting system and is tasked with keeping updated records for basic financial statements. Despite not having advanced training, the bookkeeper's responsibilities may be greater in small companies because there are fewer employees to manage the different components of a company's finances. Bookkeepers typically do not prepare financial statements and are focused on ensuring the accuracy of daily transactions.

What Does a CFO Do?

A CFO will perform all the functions of overseeing the accounting department or will supervise the staff that does. More importantly, a CFO will help the business owner define the following key business documents, strategies, systems or processes:

1. A written 3-5 year strategic growth plan
2. Identify the company's value proposition
3. A system to get accurate and timely financial statements
4. Develop key management reports to measure critical company metrics
5. Financial forecasting
6. Determine the optimal capitalization structure
7. Manage cash flow
8. Calculate the return on company investments (ROI)
9. Control inventory and overall operating costs
10. Long-term taxation minimization strategy
11. Succession planning

Do I need a CFO in my business?

Not every business needs a CFO, but all companies need someone overseeing their finances. The decision to hire a CFO, via in-sourcing or fulltime, is tied to their strategic growth decisions. Companies that cannot justify a six-figure salary CFO, but are interested in strategic growth have the option to utilize CFO In-sourcing. You can spend a handful of hours per month with your contract CFO and work on critical projects including accounting for startups, building extensive financial models for decision making and expansion ideas, hiring employees or raising prices. If you are poised for accelerated growth or have any type of succession plan, then the answer is yes, you need someone to fill the CFO role.

(L-R) SCOTT LAURAY, JIM JANS AND STEVE BAHR | PHOTO COURTESY OF PROCFO, LLC

Can I afford a CFO?

While most accountants and bookkeepers look backward at historical data, a CFO looks forward in a strategic manner and can help identify and analyze revenue-generating activities or project and report on cost-saving ideas. The answer to this question is, "Can I afford *not* to have a CFO?"

Benefits of CFO In-sourcing

CFO In-sourcing can be viewed as a strategic step to add a seasoned financial professional to your management team without having to incur the fulltime salary. Some companies will only need two-three hours per month, while others may need 10-12 hours. Your CFO can help you set your strategic growth plan, help with financing issues, help you monitor your operational expenses, set budgets and targets, and eventually help with your succession or exit plan.

Next time we will discuss your three-five year strategic growth plan.

Contributed by the CFO In-sourcing team at ProCFO. James Jans, Scott Lauray, & Steven Bahr. ProCFO, LLC is a full service CPA firm established in 2007 providing accounting, CFO, financial statements, payroll, and tax services for businesses. 541-728-0444, ProCFO.com