

How employers (on either side) can protect against 'poaching'

By: Gauri P. Punjabi September 11, 2014

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Recently, litigation consultant TrialGraphix, Inc., sued its competitor FTI Consulting, Inc., and four former high-ranking employees in New York Supreme Court for allegedly scheming to steal its trade secrets and gain access to its clients.

The complaint alleges that, despite signing restrictive covenant agreements, the former employees resigned under suspicious conditions and then went to work for FTI. At least one of the former employees also encouraged TrialGraphix customers to follow him to FTI, the complaint says.

In light of these actions, TrialGraphix claims that FTI was seeking to obtain an unfair competitive advantage over TrialGraphix that would have "decimate[d]" its business in New York.

While this matter just hit the docket, it serves as a good reminder to employers that, while they cannot stop an employee from leaving, they can take steps to make it less likely that competitors will effectively poach their employees, solicit their customers, and access their confidential information.

These steps include requiring their employees to execute clearly worded, reasonably tailored restrictive covenant agreements; ensuring that they carefully guard all trade secret and confidential information; promptly cutting off departing employees' access to internal databases and customers lists; imposing non-disparagement obligations on employees; and requiring all separating employees to return, and confirm in writing that they have returned, all company documents, devices, data and other property in their possession on or before their last day of employment.

On the flip side, employers seeking to hire a competitor's employees can take several steps to minimize exposure to a lawsuit.

For starters, they should ask to review copies of any existing restrictive covenant agreements to protect against a potential breach of those agreements as a result of the hire.

They should also have new hires warrant in writing that they will not use confidential information and trade secrets belonging to their previous employer, as well as take steps to ensure that new hires will not disclose such information during employment.

They should also consider prohibiting new hires from disparaging their former employer.

While taking some or all of these actions doesn't guarantee the absence of a lawsuit, they certainly make one (or a liability finding in connection with one) far less likely.

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