



## Employers, Watch Your Assets

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Want 2 chat about Gen Y? About 80 million have joined the American workforce. These text-happy youngsters, born after 1980, present new challenges for employers. One of these is the Generation Y mindset that they are one-person enterprises entitled to sell their work experience, and the proprietary information they can gather, to the next highest bidder. R u worried about protecting your assets?

The common law in many jurisdictions still recognizes an enforceable "duty of loyalty," which holds that an employee owes to the employer behavior in the best interest of the employer while serving and being compensated as an employee. This is the doctrine Food Lion used successfully to win a large verdict against the news producers of the television program 20/20 after the TV network's producers sought and gained jobs with Food Lion and, while on Food Lion's payroll, video-taped food-handling practices for use on air.

There are specific contractual agreements that employers and employees can enter into, that provide a higher degree of protection for the company. Here are a few:

1. No-raid and no-solicitation clauses are related to, but not the same as, non-compete clauses. While non-compete agreements are impossible in California, a properly drafted non-solicitation provision will be enforced. This limits a departing employee's capacity to solicit your customers, or their fellow employees, to follow them to their new employer. Courts are willing to enforce these under less stringent conditions than non-compete clauses. Injunctive relief and damages may both be available when the employee breaches the agreement.
2. Repayment clauses are useful to protect an employer against losing money paid out in the form of moving allowances or tuition reimbursement or other disbursements that employers normally expect to amortize over a long period of employment. You may recover some or all of the disbursed funds provided there is a carefully written contract saying so. A promissory note, executed before the funds are disbursed and setting forth the terms of debt and the conditions for repayment, will streamline the enforcement process.
3. Trade secrets and proprietary information clauses are another option. Although trade secrets are protected by statute, disputes may arise over the interpretation of what is or is not a "trade secret" within the meaning of the statute. Employment contracts that provide their own definitions of "confidential information" and "proprietary information" provide an extra layer of

protection and make enforcement easier.

As mentioned, some jurisdictions recognize a common law duty of loyalty. Employers can strengthen their protection against disloyal employees by contractually defining the duty and requiring employees to promise loyal behavior while on the payroll. Courts are quicker to enforce a contractual duty with clear definitions than to find a breach of a common law obligation.

There is nothing any employer can do to force an employee to remain employed. This is why a highly compensated sports coach can sign a long-term contract with a school or franchise and leave soon afterwards to take a better opportunity. But there are many things you can do to make it costly for employees to leave and to limit the damage caused if they do.

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