

Departing Employees: Tips to Protect Your Practice

Every medical practice or company, regardless of size, has sensitive information and valuable customer and employee relationships. In today's business environment, with physicians and staff moving from practice-to-practice, greater worker mobility and a full suite of digital tools and personal devices in the workplace, it is easier than ever for departing employees to take trade secrets and confidential information with them.

There are certain steps employers can take to minimize the risk of theft of confidential information and trade secrets by departing employees.

Assess the risk. Determine if the departing employee had access to sensitive information, or if the role that employee held within the company makes it more likely that information theft will occur. For example, if the employee had access to information that could be used by a competitor, it may be more likely that theft by a departing employee would occur.

Have the departing employee verify that he or she has not retained any business materials. As part of the exit interview process, ask employees to identify company information that is in the possession of the employee and request that the information be returned.

Perform an investigation to determine if any information has already been taken. Reviewing the email of a departing employee may reveal if company information was emailed to that employee's personal email address. Performing a forensic investigation of the departing employee's company electronics may also reveal if information has been either uploaded to a cloud storage service or downloaded to an external storage device.

Review the departing employee's agreements with him or her. Companies should go over with the employee any restrictive covenants in his or her agreements, including noncompetes, customer nonsolicits, nonrecruitment covenants, and nondisclosure obligations.

After the risk of trade secret theft has been assessed, if the departing employee presents a high risk of trade secret theft, a company should take additional steps to protect its interests and trade secrets.

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Hiring Employees from Competitors: Tips to Protect Your Practice

Many times, the most qualified candidates are those who are currently working for competitive medical practices. If you are not careful, the hiring of an employee from a competitor can result in litigation and potential liability. There are certain steps you can take to minimize this risk.

Be sure to obtain copies of all agreements containing restrictive covenants that the candidate has signed. It is best to obtain copies of any agreements containing restrictive covenants as early as possible in the hiring process.

Advise candidates that you expect them to comply with their legal and enforceable contractual obligations to their current employer. This includes ensuring that employees comply with any fiduciary duty or duty of loyalty they may have to their current employer.

Remind candidates of their obligation not to take any information that constitutes confidential information or trade secrets of their current employer. Candidates should be told not to take any information from their current employer, including any electronic information. Be sure employees agree, in writing, that during their employment with you, they will not use or disclose any confidential information or trade secrets of their former employer.

If the candidate is in a patient- or customer-facing position, be sure that you are both on the same page as it relates to notifying patients or customers of the transition and/or soliciting once the employee joins your company. How this is handled will be dictated by the nature of the restrictive covenants, if any, that the candidate has signed.

Candidates also should be advised not to discuss their potential employment at your practice with their co-workers. Candidates should also be advised not to recruit their co-workers to join them in leaving.

Setting these expectations early in the recruitment process can significantly reduce the chances of any issues arising after the candidate becomes employed. Likewise, in the unfortunate event of a lawsuit by the former employer, taking these steps can significantly reduce any potential exposure from the hiring of an employee from a competitor.

If your practice has questions about hiring an employee from a competitor or needs assistance investigating whether a departing employee is violating his or her legal obligations, please let us know how we can help.