Get it in writing

How having a written employment agreement can protect both you and your employees

Interviewed by Sue Ostrowski

In the old days, a handshake agreement between an employer and an employee was good enough to seal the deal. But in today's environment, doing business that way is no longer a good idea, says John Krajewski, the managing partner of Stark & Knoll Co., L.P.A.

"In handshake deals, people tend to forget over time what was agreed to, and they may have different understandings of what was agreed to. If a boss leaves, the employee may find himself with an agreement with someone who is no longer there," says Krajewski. "I highly recommend that you have written documentation to protect both the employer and the employee."

Smart Business spoke with Krajewski about how employment agreements can protect your business and the types of provisions that should be included.

John Krajewski
Managing partner
Stark & Knoll Co., L.P.A.

Why should employers have certain employees sign employment agreements?

Say you have an employee who announces he's leaving and that he's taking the company's largest client with him. Is there something you can do to stop this? The answer lies in whether there is an employment agreement in place.

All it takes is one time, and when employees have worked for a company for several years, they can really hurt it when they leave unexpectedly, taking employees or customers with them or taking ideas or inventions they had been working on for that employer. It is much more economical to have an employment agreement from the start, than to end up in a lawsuit when the employee leaves.

Who should an employer enter into employment agreements with?

Employment agreements could cover anyone, although they typically apply to a company's key executives and its sales force. Salespeople need agreements because it's easy for a competitor to come in to the marketplace and poach them, knowing they already have a backlog of customers. And an employer should have agreements with executives because they have intimate knowledge of the business and would be in a position to damage the company should they leave.

Employment agreements should be signed at hiring, because it's much more difficult to do later in the employment relationship.

What provisions should be included in an agreement?

The first is a term provision, in which the parties agree to the term of employment, and this often renews annually. As the employer, you want to include termination provisions that would allow you to terminate for cause, such as conviction of a felony, a material breach of agreement or not performing duties as assigned. From the employee perspective, he or she wants it to include an agreement that if the employer doesn't think you're doing your job, it must give you notice in writing and a chance to cure the behavior.

You should also include a duties provision, which puts in writing what is expected from the employee. This can be a tricky area to negotiate, because employers want to define the duties as broadly as possible, while employees tend to want to more narrowly focus their assigned duties. Some employers assume that they are paying employees and they should do whatever they're asked, and that is generally the case. However, the difficulty can come, for example, when an employee is working in Akron and may not be willing to move to another community to continue doing the job.

Can an employment agreement prevent a departing employee from competing with the former employer?

Having an agreement in place can protect you from the potentially damaging actions of a former employee. If an employee says he's leaving and taking his biggest client, you can prevent that if you have a covenant not to compete, a restriction that states an employee cannot compete with the company within a certain territory.

Employees don't like that because it can prevent them from staying and working in the community, but having a non-compete protects the company. Alternately, you may not want to prohibit competition, but you may want the agreement to state that employees cannot take clients with them.

There are different levels of restrictions that you can put in place. The broadest is prohibiting employment with the competition within a certain radius. A less burdensome option is that they can't divulge confidential information, they can't solicit other employees to go to the competition with them and they can't solicit customers to go with them to a new company.

Agreements should also include protection of proprietary information that belongs to the employer, which could include any type of information from which the company derives economic benefit.

Who should draft these agreements?

I recommend getting a professional to draft an agreement that fits your particular circumstances. Documents off of the Internet may be good enough in some states, but in Ohio, if the restricted territory is too broad, or the terms are too long, the court may not enforce the agreement because it finds it unreasonable.

The bottom line is that problems and disputes between an employer and employee can often be avoided by dealing with these issues at the inception of the relationship. It's much easier to negotiate terms at that time than to negotiate the terms of termination later, which could end up in court. <<

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