

# How to Lower the Risks of Competing With Your Former Boss

Before you take on your ex-employer head-to-head, make sure you understand the legal implications of this oft-risky venture.

Today's Most Read

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**Q:** I want to start a business that is the same as my employer's, but I signed a nondisclosure agreement. Is that going to be a problem? Also, is it OK to contact clients that I used to service for my former employer?

**A:** I receive questions like this often, and you're right to be concerned about stepping on your former employer's toes, especially if you'll be competing with him.

## **Nondisclosure Agreements**

When you work as either an employee or a contractor, an employer will often have you sign a confidentiality agreement, also known as a nondisclosure agreement. A confidentiality agreement is a contract where one party, in exchange for receiving employment, agrees to use information in a particular way and not tell others about it.

Confidentiality agreements typically have a clause that defines what information is confidential, how the information may be used and how long you must keep the information secret. A typical employer's confidentiality agreement states that almost all the information at their business is confidential and must be used only for the purposes of employment.

If someone who signed a confidentiality agreement with his former employer starts another business, and his employer alleges breach of the confidentiality agreement, the burden will be on the former employee to show that he didn't misuse his former employer's information. Signing the agreement meant that the employee agreed that everything the agreement covered was owned and to be used for the benefit of the employer. Proving that you didn't use the information you had access to is very difficult.

## **Trade Secret Law**

Even if you did not sign a confidentiality agreement with your former employer, you may still be subject, through trade secret law, to legal restrictions on use of information you were exposed to.

As defined by the Uniform Trade Secret Act, which is the general definition adopted under most state and federal laws, a trade secret is: "Information, including a formula, pattern, compilation, program, device, method, technique or process that: (a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other

persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy."

Often, customer lists, client leads, product specifications, business plans, market research and a lot of other business information fall under this definition and are subject to trade secret protection. If you use such information, a former employer can allege that you have stolen her trade secrets and sue you for damages or try to get an injunction to stop your business or product.

### **Starting Your Business**

If you want to risk starting a business that competes with a former employer, and there most certainly is risk involved, then there are some things you can do that may reduce the risk:

- **Read what you signed.** Read, and/or have an attorney help you understand, what you signed for your former employer. It may be drafted so that you can lessen your risk. If it contains a noncompete clause, then that will increase your risk.
- **Start from scratch and document it.** If you get sued by a former employer, you will have to prove that you did not use his information to start or run your business. Therefore, forget what you've learned and get the knowledge again. Document all the steps you take to acquire, compile or research the information you use for your business, products or services. Keep track of who you talked to, as well as when, how and what information you found.
- **Get you own customers.** Do not, under any circumstances, directly contact customers (past, present or future) that your employer had any type of contact or list for. If you are announcing your new business, make a general business announcement: Run an advertisement in the local paper or mail a letter to everyone in your industry or market. Let former customers contact you and, if they do, document the date and the person making contact. Using another party's customer list is the prime example of a stolen trade secret.

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