

You're hiring someone's employee?

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By **Charlie Plumb**

Maybe you're gaining confidence about your business's growth and you've decided to hire another employee. You are thinking about offering the job to someone who works with one of your competitors. And who could blame you? You don't have the time or resources to train a neophyte from scratch. And the competitor's employee already understands the workings of your industry, the marketplace and potential customers. Sound like an easy decision? Not so fast – there are pitfalls you need to consider.



Trade secrets and other confidential business information are subject to protection by Oklahoma law. This protection is not limited to chemical formulas, highly technical designs or the like. If the business information is valuable, not generally known to others, and reasonable steps have been taken to protect its confidentiality, the information may be protected against unauthorized use by or disclosure to others. In addition to techniques or processes, valuable and confidential information regarding customers' identities and information, financial planning or marketing intentions may fall into a protected category. Sometimes, employers who hire away their competitors' employees find themselves accused of unlawful use of another's confidential business information.

When considering employment of a competitor's employee, here are some things to keep in mind.

Consider what risk you are taking on. If your plan is to use the employee to call on the same customers or business partners and work in the same capacity as he or she did for your competitor, accusations of misuse of confidential information are increased. The same is the case if you intend to have your new employee involved in technical processes they performed for their predecessor employer, unless you can demonstrate that process was not unique or was already known to you before their hiring.

Ask your candidate for copies of any employment agreements, trade secret agreements or confidential business information agreements they signed with their employer. Review these agreements before offering any job so you will have an idea of the scope of any limitation the former employer may assert as to their ability to work with you. Also, some of these agreements may require your candidate to inform their current employer if they are talking to you or considering going to work for you.

If you offer the candidate a job, explain in writing that you do not want them to bring, utilize or disclose in any fashion confidential information they have obtained from their former employer. You should emphasize that your own organization has the information and material necessary for them to perform their new job.

Once they come to work with you, keep track of their activities, as well as what information they are using. This may help you demonstrate they have not been using or relying upon any confidential information obtained from their prior employer.

Finally, a former employer who is claiming improper use of confidential information will sometimes contact their former employee directly, without your knowledge. Make sure your new employee knows to inform you if, after coming to work for your organization, they are accused of using or disclosing confidential business information.

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