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New Year's Resignations: Is Your Company Prepared?

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January is certainly the month for New Year's resolutions. Anyone who has gone to his or her local gym or fitness center can certainly attest to that! But January is also a big month for New Year's RESIGNATIONS. Many companies experience their highest employee turnover rate after the 1st of the year. Why? Well, a lot of companies pay out their bonuses and/or commissions in December (the end of the year). Many of the employees who depart in January had already made their decision to leave weeks or months before the 1st of the year. They are simply waiting to collect their final "big" check before they leave for their new employer. While companies cannot force employees to stay with them (at least in the United States) or completely prevent turnover, they CAN at least take steps to make sure that their most valuable assets (e.g. confidential information, trade secrets, and customer relationships) are protected. **Is your company prepared for these resignations?**

Below are 5 (five) tips to make sure that your company is prepared for these resignations and in a great position to protect your most valuable assets.

1. **Ensure that Important Employees Have Signed Non-Competition, Non-Solicitation, and Confidential/Non-Disclosure Agreements.** Nearly all employees should sign at least confidentiality agreements. If employees are handling sensitive information and/or have access to such information (e.g. customer lists, secret formula, pricing, etc.), it is not unreasonable that they agree to keep that information confidential and not disclose it, even after they resign or leave the company. For higher level employees and/or employees with more direct access to customers and/or secret information, it may be appropriate for them to sign non-compete and/or non-solicit agreements that better protect the company from undue competitive harm. A simple audit of the employees and their files is always helpful

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in identifying who signed documents (if any) and whether the company should address and rollout new agreements in the new year. The audit would also help to ensure that if such agreements do exist, they are signed by the employee and the company representative and that there is also an electronic version. There are horror stories out there where employees secretly accessed the hard copy file and removed their restrictive agreements from the file. Electronic versions ensure there is a back-up.

2. **Audit the Company's Computer and Document Systems.** Separate from the employment agreements above, companies should also verify that all of their security measures are up-to-date and that the company's information (much of which is likely electronic these days) is properly protected from not just those on the outside (e.g. hackers), but those on the inside. Indeed, most IT departments and/or outside IT services can put in measures that track and/or alert you to suspicious downloads and printing, or transfers to locations outside the company system. Often times, employees who are leaving and going to a competitor decide to download all the company's goodies in the days or weeks leading up to their resignation. IT can also help restrict access to sensitive company information (need-to-know basis) and provide back-ups even when employees try to delete and/or wipe their activity.
3. **Remind Departing Employees of Their Contractual Obligations.** Even assuming you have all the appropriate agreements and security measures in place, it is always a good idea to remind the departing employees of their obligations to the company. This can be done in an exit interview and/or in a follow-up letter from the company reminding the employee of their contractual obligations and even providing them a copy of his or her contract. Most employees do not remember what they signed when they first started at a company. They fill out all kinds of forms and documents (including non-competes and/or NDA's). They may well not remember they even have those obligations.
4. **Remind Current Employees of Their Obligations to the Company.** Along with # 3, it is always a good idea to consistently remind employees of their confidentiality obligations to the company. This can be done in group sessions by key management, HR, outside counsel or a combination of all of them. Among other things, a company should stress the importance of maintaining the confidentiality of certain information, go over the policy (in the handbook and the contractual documents) and address any questions or concerns the employees may have about all of it. At a minimum, this lays a foundation for successful legal action in the future (if necessary), but it also proactively reminds the employees and often times prevents theft of information and/or blissfully ignorant sharing of the information with their new employer.
5. **Get Your Experts Involved!** If your company suspects that a former employee is violating his or her contractual agreements and/or potentially stole sensitive company information, it is imperative that you act FAST. Among other things, the company should contact an attorney who is experienced in this area of the law and possibly an outside IT forensic expert to preserve and analyze key electronic information. A cease and desist letter, or even an immediate lawsuit, may be appropriate. As they say, once the genie is out of the bottle, it is hard to put it back in. If a company sits on its hands and/or fails to detect or address such violations, it will likely diminish the opportunity for relief from a court.

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Please contact the author of this alert or any of Butzel Long's Non-Compete and Trade Secret attorneys to help you prepare for 2019.

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