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Employee Raiding and Unfair Competition: What Employers Need To Know

The California Supreme Court in *Reeves v. Hanlon* has recognized a cause of action on behalf of *employers* for alleged interference with at-will employment relationships where a competitor *unlawfully* induces employees to leave their employment. To establish a claim for intentional interference with at-will employment relationships, the plaintiff must prove that the defendant engaged in an independently wrongful act—i.e., an act forbidden by some constitutional, statutory, regulatory, common law or other determinable standard—that induced the former employee to leave his or her employment with the former employer.

The facts in *Reeves* easily demonstrated the independent wrongful conduct that induced several employees to leave employment. In *Reeves*, the defendants, two former attorneys of a law firm, resigned from the firm without notice, forming a new law firm. In the months before leaving the firm, they had printed confidential client address and contact information for 2,200 of their prior firm's clients and had intentionally erased numerous client documents and form files from the firm's computer system. They telephoned at least 40 of the former firm's clients, and likely substantially more, and persuaded these clients to leave the firm and instead obtain services with their new firm. In addition, they left their former firm without providing any status reports or information regarding deadlines for the more than 500 clients that they had represented. Over the two months' following their resignations, nine key at-will employees left the law firm, and six of these employees joined the defendants at their new firm.

While *Reeves* creates a new shield to protect employers from unlawful and deceptive efforts to raid their employees, it is important to note that the *Reeves* decision does not overturn prior law holding that it is not a tort to simply hire the at-will employees of a competitor. That is, the law remains clear that *it is not enough to merely entice one's competitor's employees to work with a new firm by offering them better terms and benefits*. As long as the inducement to leave is not accompanied by unlawful action, a competitor cannot be held liable for intentional interference with at-will employment relationships.

Employers who suspect a competitor or former employee is unlawfully inducing its employees to leave their employment should monitor the manner in which those companies are attracting their employees. For example, are the competitors (or former employees) defaming the company or its executives? Are they utilizing trade secret information? Are they breaching a fiduciary duty?

Likewise, employers offering employment to another company's employees should ensure that they do not engage in any potentially unlawful acts to induce the company's employees to leave.

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