



Employee Loyalty

Protecting the investment in your team members

by: Robert C. Goldberg, BTA General Counsel

When dealers are not checking their receiving docks for long-delayed shipments, attention often turns to their employees. Courts, legislatures and the COVID-19 pandemic have drastically altered the employment relationship. The great resignation, career polygamy (i.e., over-employment) and quiet quitting have all entered the discussion. Remote work has proven to be doable in many situations and workers enjoy staying at home. Requiring employees to return to the office is often met with resistance and resignation.

Employee manuals often contain confidentiality, nonsolicitation and noncompete provisions. Further enforcing these requirements are specific noncompete agreements. Historically, a noncompete was evaluated based on the scope of the restriction and the amount of time it was imposed. Typically, restricting former employees from competing in the employer’s geographic area for two years or less was upheld. BTA provides templates for confidentiality, nonsolicitation and noncompete agreements.

Regular calls to the BTA Legal Hotline inquire about the enforceability of noncompete agreements. Noncompetes for employees have been legislatively banned in California for years and this concept has expanded to other states and cities. Going to court to enforce a noncompete is costly and does not guarantee victory. Dealers have been encouraged to reach out to a new employer, advise of the noncompete and reach an understanding of permitted activities. This often results in the former employee agreeing not to call on any of his (or her) former customers.

Today’s question is: “How does a dealer protect the investment made in his employees?” It remains advisable to address confidentiality, nonsolicitation and noncompetition in your employee manual. Noncompete agreements should be considered in jurisdictions where they have not been legislatively banned.

There is an additional protection that has been available for years but is often overlooked: an employee education expense note. Training employees is a costly endeavor. Time devoted to training must be compensated, there is a corresponding loss of revenue, and travel, lodging and meals are often required. Dealers investing in employee training expect to — and should — receive a return on that investment.

An employee education expense note is a valuable tool implemented prior to training an individual. Initially, an education expense note should be presented to the person prior to his engagement in a training course. The mere presentation of the note can reveal a great deal. An employee who is reluctant



or refuses to sign the note indicates a lack of devotion to the organization. Perhaps he is engaged in a quiet quit?

The employee education expense note is a legal agreement whereby the individual receiving the training is advised of the cost of the program for the business. Costs include compensation, lost revenue, travel, lodging and meals. The note provides that the employee will pay for the training — not in dollars, but in continued employment.

For example, if the total cost of training is \$4,800, the note could be paid off in 12 months of employment, reducing the amount \$400 each month. If the employee does not remain employed for 12 months, he would be monetarily obligated to pay the remaining balance. The balance should only be sought if the individual leaves voluntarily or is terminated for cause. If there is a reduction in the workforce due to economic conditions, the balance should be forgiven.

While an employee education expense note will not prohibit competition, it does ensure that a dealer will receive the value of the education and training provided. An employee education expense note does not preclude the use of confidentiality, nonsolicitation and noncompete agreements and, as such, they should be considered as well.

Documents do not create a positive work environment. A strong culture, team cooperation and mentoring will. Concentrate on those and the documents become less important. ■

Robert C. Goldberg is general counsel for the Business Technology Association. He can be reached at robert.goldberg@sfbg.com.

