



Exit Interviews: A Useful Tool for Employers in the Departing Employee Context

Insights

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Given the state of the economy, employers are more conscious than ever of the need to protect trade secrets and customer relationships when an employee leaves, especially when the departing employee is opening a competitive company or joining a competitive firm. Employers often neglect, however, to take advantage of a very simple, but extremely important, tool in dealing with departing employees: the exit interview.

The exit interview provides employers with a chance to gather valuable information relating to the departing employee's future employment plans, including any risk associated with the employee's possible plans to compete in the future. The exit interview also presents an opportunity for an employer to remind departing employees of any confidentiality or post-employment restrictive covenants in place, to provide departing employees with copies of any and all agreements they executed during their employment, and to advise departing employees of the company's expectations regarding post-employment conduct.

The exit interview is the perfect time for an employer to determine what confidential or proprietary information belonging to the company the departing employee has in his or her possession, and to demand the return of all company property. Indeed, it may be in an employer's best interests to have a departing employee sign a certification during the exit interview acknowledging that he or she received copies of previously executed post-employment restrictive covenants and certifying that all confidential or proprietary company information and property has been returned.

Despite the many benefits associated with conducting exit interviews, the exit interview process is not utilized, or under-utilized, in many companies. Employers should consider having an exit interview process in place so that they are prepared to interact with departing employees. It is important to educate management and the human resources department regarding the importance of exit interviews, and the procedure for conducting successful exit interviews.

Preparation for Conducting Exit Interviews

Before the need to conduct an exit interview arises, employers should ensure that they have a process in place to effectively and quickly interview departing employees. It is not uncommon for employees to resign without providing advance notice. Consequently, employers must be prepared in advance of an employee's surprise resignation in order to take advantage of the benefits of the exit interview process.

It is prudent for employers to develop an exit interview form or checklist for use during interviews of departing employees. Important topics to address during exit interviews may include:

- **Future Employment Plans.** Employers should attempt to determine the name of any new employer, the departing employee's position and job responsibilities at the new employer, and the location and/or sales territory where the departing employee will work on behalf of the new employer. Employers may also want to request the employee's permission to provide the new employer with a copy of the departing employee's employment agreement or any other agreement containing restrictive covenants.
- **Employment Agreements and/or Confidentiality Policies.** When possible, employers should provide and review with departing employees any applicable employment agreement, restrictive covenant agreement and/or confidentiality policy. If a resignation comes as a surprise and the employer is unable to retain the departing employee's agreements prior to conducting the exit interview, the employer should be sure to advise the departing employee of the company's general policy on post-employment competition and use of confidential information. The employer should advise the employee that the company demands compliance with all post-employment restrictions on the departing employee's ability to compete and that the company will take action to enforce its contractual and common law rights if necessary. A copy of applicable agreements and policies can be sent by mail if they are not available at the time of the exit interview.
- **Possession of Confidential Information.** Employers should determine what company information, if any, the departing employee has in his or her possession. If possible, employers should inspect the departing employee's office for visibly missing information. Employers should also question departing employees as to whether they have any information relating to what the company considers to be confidential information (including possibly customer or pricing information) in electronic form, on personal computers, stored on cellular phones, in hard copy in home offices, etc. It is important for employers to collect all company-issued computers, telephones, and other property during the exit interview. It is also wise for employers to disconnect a departing employee's remote access to the company's computer system and to consider whether to set aside the departing employee's computer for possible forensic imaging.
- **Pre-Resignation Conduct.** An important topic to address during exit interviews is the departing employee's conduct within the weeks or months leading up to his or her resignation. Employers should inquire as to whether the departing employee has engaged in efforts to remove or retain confidential information. Employers should also question whether the departing employee has shared any company information with a third party – such as a new employer. Depending on the departing employee's position, it likely makes sense to question whether the employee has advised any customers or colleagues of his or her intent to resign. Gathering this information at the time of the exit interview will assist in evaluating the risk of loss of company information, customers and employees.

Preparation of Employee Acknowledgement Forms

Employers should also develop and have available employee acknowledgement forms for use during the exit interview process. Such forms may include the following acknowledgements: (1) that the exit interview occurred; (2) that the employer provided and/or advised the departing employee regarding contractual agreements containing post-employment restrictive covenants or confidentiality obligations; (3) that the employer advised the departing employee of its intention to enforce all contractual and common law rights against the departing employee, if necessary; (4) that the departing employee received and had access to the employer's confidential information during his or her employment, and that the employee will not use or disclose the employer's confidential information for his or her own benefit or the benefit of others; (5) that the employer advised the departing employee of the need to return all company information and property; and (6) the employee's certification that he or she has returned all company property and has not retained any confidential information. The acknowledgement form should provide an area for the departing employee to sign and note the date.

Although the exit interview consists of a simple conversation with a departing employee, the conversation can provide valuable information to assist the employer in protecting its confidential information, customer relationships and relationships with remaining employees. The exit interview provides a fleeting opportunity to gather information that may become inaccessible or difficult to determine once an employee is gone. When conducted properly, the exit interview constitutes an extremely useful tool for employers in the departing employee context.

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