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## **(There Must Be) 50 Ways to Leave Your Employer**

Do's and Don'ts of Quitting Your Job in an At-Will Employment State

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*You just slip out the back, Jack. Make a new plan, Stan. You don't need to be coy, Roy. Just listen to me. Hop on the bus, Gus. You don't need to discuss much. Just drop off the key, Lee. And get yourself free!*

--Paul Simon

So you want to quit, move-on, leave, walk out. You've found another company that will *finally* appreciate your talents. Or maybe you have succumbed to that old siren song calling you to "be your own boss."

In Louisiana, there actually are very few ways an employer can legally stop you from leaving your job. But that doesn't mean that quitting your employer will always be a clean break. In this letter, I address some of the things every soon-to-be-former employee should think about when they decide to "drop of the key."

Almost every state in the union is technically an "at-will" employment state though some state laws and federal statutes limit (to some extent) the power of an employer to fire a worker. In Louisiana, there are almost no such state-level limitations on the freedom of employers to fire or of employees to leave.

In fact, this basic right is written into our Civil Code. Article 2747 declares, "*A man is at liberty to dismiss a hired servant attached to his person or family, without assigning any reason for so doing. The servant is also free to depart without assigning any cause.*" Barring unlawful firings resulting from discrimination or retaliation, for example, or a breach of contract between the servant and master, Louisiana says either party may terminate their relationship "at-will."

One of the first issues an employee may confront when choosing to quit is an existing employment agreement. Such agreements may reserve to Old Employer, among other things, the right prevent you from taking an ownership interest in a competing firm for up to two years. But Louisiana has a strong public interest in keeping people off the welfare roles. Therefore, even an "iron-clad" non-compete agreement cannot be used to keep you from *taking a new job* with a competitor<sup>1</sup>

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<sup>1</sup> If you have signed a non-compete, it still would behoove you to hire a good labor and employment lawyer to help you understand your best course of action based on your specific circumstance.

Without an employment agreement, on the other hand, you can quit your job in Louisiana whenever you want for any reason or no reason at all. So, your next step may be determining exactly what *and* whom you are allowed to take with you when you go. Tread carefully if your success with New Company requires you to take more from Old Employer than just your experience. Old Employer has an array of legal weapons to help him recover should your departure involve extracurricular activities such as theft, trade secret misappropriation and unfair competition.

Beware! Just because you've grown attached to that workplace pen, stapler, or welding machine does not mean it really belongs to you. Unless Old Employer gives you express permission to keep that treasured item once you leave, taking it is theft and you can be prosecuted.

While most of you will easily see that outright larceny could be problem, few people realize the same rule applies in the realm of Old Employer's trade secrets and inventions. Even if you developed those original techniques, concepts, designs, plans or other intangible property as part of your job, remember—you do not own them!

The brilliant (and maybe not-so-brilliant) ideas you came up with on the job all belong to the business that paid you. Unless Old Employer signed something granting you express title to the ideas you developed for him, HE OWNS THEM under one of any number of theories including "work-product" and trade secrets concepts.

But can you tell your New Company all about the techniques you invented for your old employer? What about the new technology you heard about "through the grape vine" but didn't actually work on? The answer is: no and no!

What if your idea resulted from access to Old Employer's know-how, but you perfected it all on your own? The latter question is a tougher call when you are an hourly employee working on your own time or if the technique you invented was not assigned to you nor was part of your job. But don't assume that either of these situations cinches your outright ownership of the invention.

If a court rules your use of Old Employer's ideas in projects for New Company is misappropriation, both you and New Company could be liable for

#### **Did you know?**

In addition to being an "at-will employment" state, Louisiana is also a "right to work" state. The right to work law in this state is designed to protect employees from being compelled to join a labor organization in order to accept a job in a certain industry.

These laws protect a workers right to either join, assist, or alternatively, *not* to join a union. But "[n]o person shall be *required*, as a condition of employment, to become or remain a member of any labor organization, or to pay any dues, fees, assessments, or other charges of any kind to a labor organization."

Employers and local governments are likewise prohibited from even *voluntarily* agreeing to require union membership as a condition of employment, any transaction, zoning, licensing or permitting, and any such contract is illegal, null and void. Criminal penalties for violating these laws include imprisonment and/or fines, and any employee subject to such a conditioned is *entitled* to injunctive relief preventing enforcement of that contract.

-- La. R.S. 23:981-987.

monstrous amounts of damages. Damages may be awarded even if using the pirated information was exclusively your bright idea and New Company knew nothing about it.

In fact, a secretary working at Coca-Cola recently learned just how serious piracy issues are when she tried to sell Coke's "secret formula" to Pepsi and ended up sentenced to eight years in federal prison. It was Pepsi that turned her in. See *Yahoo!News* at [http://news.yahoo.com/s/ap/20070523/ap\\_on\\_bi\\_ge/coca\\_cola\\_trade\\_secrets](http://news.yahoo.com/s/ap/20070523/ap_on_bi_ge/coca_cola_trade_secrets). Your value to your new firm should only be about your ability to come up with new ideas

on your own; not your ability to pilfer inventions from your last workplace!

But what about recruiting new staff from among your former coworkers or soliciting new clients from Old Employer's client list? Folks have argued with varying degrees of success that Old Employer can't blame you if they lose other employees or even clients to New Company. After all people are free to leave their jobs, and you can't help it if your old customers want to leave Old Employer to follow you. While a court may buy that line of reasoning, most say the legitimacy of this argument depends on *how* the loss of employees and clients were brought about.

For more information on this subject, see these websites:

- ◆ National Right to Work Defense Foundation: <http://www.nrtw.org/>
- ◆ Charles J. Muhl, *The Employment at Will Doctrine: Three Major Exceptions*, *Monthly Labor Review*, January 2001 at p. 3. <http://www.bls.gov/opub/mlr/2001/01/art1full.pdf>.
- ◆ Susan P. Billeaud, *You Know It Baby! Now, Keep Everybody Else From Finding Out*, *Small Business Today*, October 20, 2006 at [www.southernbizlaw.com](http://www.southernbizlaw.com).

In *National Oil Service of Louisiana, Inc. v. Brown*, for example, a Louisiana appeals court found that while an employee is free to compete with a former employer in the absence of a contrary agreement, whether those activities has crossed the line into "unfair competition" (and hence, an illegal trade practice) depends on a series of factors:

1. "the manner in which and the purpose for which the customer lists are compiled;"
2. "the conduct and motivation of the employee before and after the employment relationship ends;"
3. "the manner in which the customers are contacted after the termination; the nature of the representations made to the customers by the former employee; and"
4. "the existence of a scheme or an intent to injure or to take over all or a substantial part of the former employer's business."

What does all of this add up to? Unfortunately, the courts haven't given us a bright line test as to whether a particular act is unfair. My short answer therefore is: "play nice!" Don't recruit your co-workers to leave Old Employer with you while *you are still employed by their boss*. Don't copy client lists from Old Employer's database so you'll have that info handy on your next job.

For goodness sake, don't recruit Old Employer's clients for New Company

while Old Employer is still paying you. Finally, don't trash Old Employer to his clients so you can get their business later, either. Implying you know Old Employer is "ripping them off" because of your inside information as a former employee would be the kind of conduct likely to be deemed "unfair."

Of course, your ability to walk away may be further limited if you are also an investor or co-owner of Old Employer. You are *not exempt* from these rules merely because you are a part-owner or even a founder of the company. In fact, you may now have two problems—what and who you can take with you, and how to regain your money or use of your ideas?

If Old Employer has a partnership, operating or shareholder contribution agreement that everyone signed, let those be your guide. Be on the lookout for provisions in that agreement that do not allow owners to reclaim their initial contributions to the firm. Upon dissolution of a firm, an owner may recover the balance remaining in their capital account, but not necessarily Aunt Bessie's antique desk. Further, if the firm does *not* dissolve, your sweat equity or know-how may now belong to Old Employer—and not you. When you go, Old Employer may get to keep every bit of intellectual property you contributed to it or developed on its behalf.

Any capital investment you made in your closely-held enterprise may be difficult to retrieve as well. If there's a buy-sell agreement, you may be required to find a bona fide buyer for your interest before your partners are compelled to use their right to match offers. An interest in a large or publicly-held company generally will be easier to sell to an outsider but even then your operating agreement, bylaws and/or shareholder agreement must be your guide (along with any SEC regulations that may apply).

If you are congratulating yourself for never having commemorated your relationship with Old Employer with a written partnership agreement, bylaws or operating agreement, don't think you are out of the woods. You, my friend, are in the least enviable of all positions because those dreamily optimistic discussions you once shared with your partners now may be construed by a court as binding oral agreements. Don't think that because your contracts aren't in writing they don't count!

In summary, your decision to leave Old Employer may be the best one for everyone involved. Just be sure to honor your agreements scrupulously and treat both your New Company and Old Employer fairly to avoid what could be a nasty and expensive fight.

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