

What are your rights when a chef wants to set up alone

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What can you do if one of your employees decides to leave and set up their own business in competition with you? Legal expert David Morrison explains how to protect yourself against the consequences of such a move

THE PROBLEM

I am the owner of a restaurant and one of my top chefs has given notice to terminate his employment and tells me he is planning to set up business in competition with me. What can I do to protect my business?

THE LAW

Employees owe their employer a duty of good faith, and this applies while they are serving out their contractual notice. This means that while they remain on the payroll they must not act in a manner that is directly against their employer's interests - for example, by advertising a competing business or seeking customers. They must not use confidential information for their own purposes or take copies of important documents, for example lists of customers.

However, they may prepare to launch their business - by registering a company, negotiating bank finance and finding premises, as these actions do not directly undermine their employer's continuing business.

Once the employee has worked their notice, they continue to owe their former employer a duty not to exploit any "trade secrets" but unless their employment contract contains express provisions there is nothing to prevent them from approaching customers unless you can prove that they have copied your customer lists.

The law is unlikely to provide much protection against information that they have carried away in their head or which they could say is part of their knowledge and experience learnt on the job.

EXPERT ADVICE

There are two principal ways in which an employer can protect himself against the consequences of staff leaving to set up business for themselves or to work for a competitor.

First, it is necessary to have a well-drafted employment contract which should contain restrictive covenants and the right to put the employee on garden leave.

The restrictive covenants must be fair and proportionate as the employer's right to protect his business needs to be balanced against the right of the employee to earn a living.

Restrictions typically might include the prevention of the employee from approaching customers, employees or suppliers for a period of time after their employment ends, typically six months, although a longer period might be justified for more senior staff or directors.

One should also retain the right to prevent the employee from working during the notice period if his presence is going to be disruptive or you do not want them to be able to contact customers as soon as you know he is planning to leave.

Secondly, you need to consider what information is confidential and what you do to protect it. Again the terms of your employment contracts will be important.

You should make sure that only key staff have access to confidential information and so far as possible you designate it as confidential. You should have secure systems in place to protect this information.

CHECK LIST

- Review your employment contracts, especially of key or sales staff - do their contracts contain restrictive covenants?
- Are the terms of a restrictive covenant fair and reasonable?
- Have you retained the right to put employees on "garden leave" in your employment contracts?
- Designate truly commercially sensitive information as "confidential" and have secure systems in place to limit access to it to those who need to know.

BEWARE

It can be disruptive when staff leave but if they are able to take your customers with them then it could be even more damaging to your business.

CONTACT

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