

THE LEGAL NICETIES: PROTECTING YOURSELF WHEN YOU LEAVE

When Mark Coker decided to set up his own public relations agency, he was advised by his lawyer not to tell his boss about his decision.

Coker, now president of Dovetail Public Relations, Los Gatos, CA, decided to be up-front and informed him of his plans. To his dismay, 'before I packed up they brought me a letter warning me about recruiting their clients,' he says. According to Coker, his boss drove to one client's office and threatened to sue if it signed with him. Though the client soon dropped the agency, it didn't sign with Coker either.

If you're planning to jump ship and start a PR agency of your own, you're going to want to bring along some provisions - whether they're in the form of Rolodex cards, computer files or clients. The only problem will be the tension between your employer - who would no doubt prefer that you go bare - and your need to be outfitted for survival. And, of course, you're not immune to a well-timed legal challenge.

PRWeek talked to labor and employment lawyers to get their take on how to walk the very precarious plank from your old firm to your new. While these lawyers weren't dispensing legal advice - each situation, after all, is fact- driven, depends on the state you're in and varies according to the risk you're willing to assume - our analysts did mention the following points.

1. Read the rules before you go.

'Take stock of what the written obligations to your current employer are,' suggests Peter Altieri, of New York's Epstein Becker & Green. A contract might spell out in some detail what you can and cannot do in terms of soliciting clients, competing with your employer and taking materials.

Even if you have no contract, other documents, such as employment handbooks, might contain restrictions.

The complete absence of written materials doesn't absolve you from acting with a certain degree of decency. 'While you are still there, you do have fiduciary duties, including the duty of loyalty, even in the absence of a noncompete agreement, a nonsolicitation agreement or a confidentiality agreement,' explains James Esseks, a partner at New York's Vladeck, Waldman, Elias & Engelhard, which represents employees.

2. Use precaution in forming any alliance with clients.

'It's important not to actively solicit deals or engagements that were either ongoing at a former employer or in the pipeline,' says Altieri.

Even if you aren't bound by a noncompete clause, certain common-law restraints might restrict you from soliciting clients before you leave, the general principal being that you can't unfairly compete with your employer. 'It would be safer to (approach clients) immediately following your

departure,' suggests Arthur Abelman, counsel to New York's Moses & Singer, who counts the PRSA among his clients. 'Send an announcement out.'

3. Lighten your load.

'Don't leave your former office with anything that is not your truly personal property,' suggests Michael Lasky, a partner at New York's Davis & Gilbert. 'Typically, if a departing PR person says, 'I did a marketing plan, I wrote it, I presented it, can I take a copy of it with me?' the answer is no.' While there may be some exception if documents were given to third parties and are sufficiently public, Lasky suggests that if you need something you did for a client, don't take it from your former firm, but ask the client for a copy after you've opened up your own shop.

'Clearly, anything the company owns from computer files to any client materials is all company property,' explains Lasky's partner Lewis Rubin.

'A Rolodex gets into a gray area.' The better your information, the more likely it will be considered to be proprietary. 'It really all depends on what's on the Rolodex,' says Lasky. 'The devil's in the details.'

4. Don't let your secretary rat you out.

Don't use your employer's facilities to establish new business for yourself, says Altieri. Don't ask your assistant to download your files onto floppies; nowadays employers can determine what files were deleted from a PC, copied onto discs or e-mailed. 'Once they find out (what you took), they are in a better situation to go after you' and claim that you misappropriated information, Esseks warns.

5. Remember that you have no friends.

Piss anyone off enough, and they'll be willing to have at you publicly.

Even though 'litigation is very difficult and expensive to pursue,' Altieri says, employers left behind 'have to strike the balance between that (cost) and sending a message to their current workforce.' Even if you never reach a trial - many of these matters are settled out of court or handled by an arbitrator - the legal meter will be ticking and may well set you back.

If you want to outlast any legal headaches, talk to your lawyer before zbailing out.

Lori Tripoli.

PRWeek, Sept. 11, 2000, <http://www.prweekus.com/Starting-your-own-PR-agency-Ditching-your-job-to-strike-out-on-your-own-is-not-always-easy-Claire-Atkinson-explores-some-of-the-questions-you-should-consider---and-how-to-do-it-right/article/39701/>