

## Employee's Legal Duty to Employer

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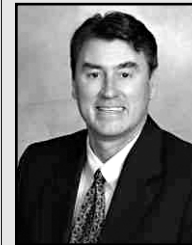
Few employers take advantage of the contractual protections provided by an employment agreement. The prevalence of at-will employees often brings corporate clients in asking 'What happens when my at-will employee leaves to work for my competitor?' Arkansas courts strike a delicate balance between the employer's right to loyalty from employees and the employees' rights to seek other employment.

Prior to separating employment, employees owe to the employer a duty of complete loyalty. The employee may not solicit other employees or customers to leave and come to a competing business prior to the date of separation. However, an employee may not be liable for simply notifying other employees or clients of his or her intention to leave and compete, but once that notification crosses the line to active solicitation, the employee has violated his solemn duty to the employer.

After terminating employment, an employee's duties to the former employer are generally provided only by contract. The exception, of course, is the employer's right to protect trade secrets. Employees may not take from their employer information not generally known to the public, not readily ascertainable by the public, and which the employer has made reasonable attempts to keep secret. This is not a great deal of protection for the employer, however, as Arkansas narrowly interprets what constitutes a "trade secret."

Conversely, employers owe to their employees certain duties, including a duty to pay employees all earned compensation prior to the date of termination. The courts have determined that an employer is not entitled to withhold compensation simply because the former employee is attempting to take other employees and clients to a competing enterprise.

Employers should not rely upon common law duties of loyalty for protection from unfair and damaging acts by employees and former employees. Employment contracts can expand the information entitled to trade secret protection, restrict employees from competing for certain periods of time, and may even enlarge the duties an employee owes to the employer. Even in the absence of contractual duties, however, employers will find some protection for their business interests through court decisions and state statutes.



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