

NO WRITTEN EMPLOYMENT AGREEMENT, NO PROBLEM:

Ohio Law Allows an Employer to Sue an Errant Employee

In The Absence of an Employment Agreement

Some business owners are under the false impression that if they do not have a written employment agreement with an employee, replete with non-compete, non-solicitation or other like clauses, they have no recourse to stop or demand damages from an errant employee. As will be shown herein, this impression is wrong. Ohio law provides multiple avenues of potential recovery against those employees who have improperly wronged their employers, absent the existence of an employment agreement. Multiple possible claims are outlined in this article. The list, though extensive, is not meant to be exhaustive

A. Misappropriation of Trade Secrets

Regardless of whether there is an employment agreement, under Ohio law, an employee is never allowed to misappropriate her employer's trade secrets. In order to prove a misappropriation of trade secrets claim, an employer must be prepared to show the existence of trade secret information such as protected client lists, pricing information or other protected information valuable to the employer. In order to succeed, the employer must also show that the trade secret information was acquired by the employee through improper means or a confidential relationship. Improper means include such things as theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy or espionage through electronic or other means. Finally, the employer must be prepared to prove that the trade secret information was used without authorization.

B. Unfair Business Practices

Ohio law provides a remedy for an employer injured by the deceptive trade practice of its employee. An employee may engage in a deceptive trade practice by disparaging the goods, services, or business of the employer by a false representation. The concept of unfair competition may also extend to unfair commercial practices such as circulation of false rumors, or publication of statements, all designed to harm the employer. To constitute unfair business practices, the alleged statements must concern false statements of fact. The employee's statements of opinion are protected by the Ohio Constitution and are not actionable.

C. Tortious Interference with Business Relations

A tortious interference with business relationship claim exists in the employment setting when an employee, without privilege to do so, induces or otherwise purposely causes a third person not to enter into or continue a business relationship with his current or former employer. This scenario typically arises when a employee prepares for leaving

an employer by convincing current clients, distributors or suppliers to cease their relationship with the employer and to move with the employee to a new employer.

D. Conversion

Conversion is defined as a wrongful or unauthorized act of control or exercise of dominion over the personal property of another which deprives the owner of possession of his property. To prevail on a conversion claim against an employee, an employer must show that it demanded return of certain property, the employee refused to deliver the property and, despite the demand, the employee continues to assert wrongful dominion over the property. This scenario typically arises when an employee leaves an employer and attempts to take certain material with him such as file materials, sales data, client lists, computers, phones or any other property of the employer.

E. Breach of Duty of Loyalty

In Ohio, it is an implied condition of employment that an employee will carry out his duties in good faith and not act to the detriment of his employer. The common-law duty of loyalty is breached when the employee improperly competes with his or her current employer, while still employed. For example, the employee cannot solicit customers of his employer prior to his resignation, and after resigning, cannot disclose or use trade secrets or confidential information belonging to his former employer for the benefit of a competing business. Other examples of breaches include taking company property, misusing company funds, or taking kickbacks.

F. Misrepresentation Related Claims

Certain claims may be had based upon certain promises or misrepresentations made by an employee. If promises were broken or misrepresentations were made, certain claims may arise such as promissory estoppel, intentional misrepresentation, negligent misrepresentation and fraud, if the misrepresentation was done with the intent to defraud the employer.

G. Civil Conspiracy

In some instances, an employer may be able to prove that the employee engaged with others in a civil conspiracy. Civil conspiracies have been found where individuals conspired to misappropriate trade secrets or otherwise violate duties to their employer. Conspiracies have also been found in cases involving the unlawful “taking” of clients and employees.

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As noted herein, an employer harmed by an employee has several viable causes of action, even absent a non-compete, non-solicitation or similar employment agreement.

Many of the claims outlined in this article could also be used against the employee's new employer, if it can be shown that the new employer knew of or participated in the employee's improper activities and, in some instances, may also be used against non-employee third parties who are improperly attempting to harm a business. In many instances, in addition to monetary damages, a business may be entitled to a court ordered injunction to stop the improper activities. An employer harmed by an employee's actions would be best served by contacting an attorney to determine which of many possible viable claims exist.