



Protect Your Return on Investment When Training Key Technical Employees

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Most companies understand the need for obtaining a non-disclosure agreement (NDA) from a key employee. The higher the level of access to confidential or proprietary company information, the greater the necessity for obtaining such agreements. Likewise, in many companies, the typical NDA is coupled with some type of non-competition agreement and perhaps a non-interference agreement, which is intended to prevent the current employee from inducing other valuable employees to depart from the current employer to work for a competitor.

One additional strategy to reduce the likelihood or at least delay early departure of key "technical" or otherwise highly trained employees is to add financial disincentives to departure. I use this quite a bit in tech companies where the employees are always going to training. I get the company, for example, to put a price on the cost of the out-of-office seminar, including travel, lodging, loss of productivity time, seminar fees, etc. The company pays for the normal training costs, but before the employee gets fully signed up for the training experience, he or she must sign a conditional promissory note for repayment of some or all of this cost.

The note we draw up has all the "bells and whistles" of a standard bank promissory note, although typically formatted in a less intimidating manner. It also, however, presents a soft sell, where we talk about what this experience will do for the employee and how the company is just protecting its investment so the employer and the employee get the mutual benefit of what the employee will learn.

The note is "conditional" upon the employee actually attending the training session, or the process going far enough for the company to actually expend money or other resources to provide the additional training. The note is amortized over a period of "forgiveness" so that the longer the employee stays, the less the employee has to repay. This forgiveness period is generally calculated to be the length of time in which the company recaptures the value or ROI of the educational experience, and the information starts to become less relevant and perhaps needs to be updated shortly anyway.

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Typically, the entire note is forgiven in a period of one to two years, so if the employee stays that long, he or she pays nothing. This should obviously soften the blow for the employee. Sending an employee to a Steven Covey seminar in Florida, a Microsoft training session on a new software product, or a Zig Ziegler sales workshop would be examples of when this legal tactic might be used.

Presumably, after the training experience, the employee is more valuable to the company. On the other hand, the employee will likely also be more valuable on the open market, and may make contacts, during the training session, with competitors who may try to lure the employee away from the current employer.

If the employee stays with the current employer long enough for the "forgiveness" period to expire, then the employer has presumably recaptured all of the return on the investment it made to gain a more valuable employee, while the employee has paid nothing for this exercise in self-improvement. If, however, the employee balks at what should be a "free" seminar, presuming he or she gives no other indication of intent not to stay with the current employer long enough for the employer to recapture the ROI of funding the training experience, then this can create an early warning system indicator the employee may be thinking of departure before the note would be repaid.

The refusal of an employee to sign such an agreement might be an indicator that another, similarly situated employee should be selected for the training. That might also be a good time for the employer to:

- 1) review, update, and "sanitize" the personnel file of the balking employee, including recent performance review metrics;
- 2) talk to the employee's supervisor to see if any issues have arisen indicating a potential future departure of the employee; and
- 3) to be sure that the original of the employee's NDA and non-compete agreements are in a safe place off site.