

## An employee is quitting and taking clients with them. What are my options?

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 3 COMMENTS



### THE QUESTION

I own an accounting firm that does bookkeeping services for small businesses. An employee who worked for me for more than 20 years resigned with four weeks' notice. The employee said they were starting their own business and took at least 12 of my clients. The employee had no contract with our company. Can that person take away our clients to start their own business? What are my rights and options?

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### THE SECOND ANSWER

George Cottrelle, partner, Keel Cottrelle LLP, Toronto

You are understandably upset that your former employee took 12 of your firm's clients to their new business. However, as you had no contract with the employee restricting them from soliciting your clients, your rights are based on common law principles.

The restrictions on activities of employees depend upon whether the activities occurred while the employee was still employed, or postemployment. Different considerations also apply when an employee is a "fiduciary," such as a key employee in a senior role. In all cases, employees may not take your firm's property, including client lists, and are prohibited from using any of your firm's confidential information.

All employees have a duty of good faith, which precludes them from directing clients away from your business, while still in your employment. After their employment has ended, fiduciary employees are restricted for a reasonable period of time from

certain competing activities such as soliciting your clients' business. There is generally no such restriction on non-fiduciary employees.

You should send the employee a letter, reminding them of their legal obligations and that you intend to strictly enforce your rights. If there has been a material breach by the employee of any of their common-law duties, then you could institute proceedings for damages, and in limited circumstances may be successful in an injunction application.

You should require that new employees sign an employment contract, with restrictions not to use confidential information, or to contact your clients for a specified term period, after they leave your employment.

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