

client ALERT

Employment Law Alert

In recent months, our firm has seen an explosion of cases involving employee fraud and unfair competition. In almost every instance, current or recently departed employees have taken corporate opportunities from their employer or former employer by transmitting confidential bid information to a direct competitor. In at least two instances, the employees actually bid against their current employer by reproducing bids they had prepared for their employer on the stationary of a competitor. In other instances, the employees have worked with a competitor to pirate our client's best employees. Our firm has responded aggressively in these cases to protect our clients' interests and have obtained excellent results, including obtaining injunctions in several cases and significant remuneration in others.

There is a common misconception that employees can do whatever they want -- even work for a competitor -- after hours and on weekends because it is their "own time". Not true! Even in the absence of a non-competition agreement, employees owe common law duties of loyalty and confidentiality to their employer. Moreover, corporate officers and high level employees also owe a fiduciary duty to their employer.

How can you protect yourself and your company?

- Have your key employees **sign non-competition** agreements that protect your valuable information and customer relationships;

- Develop appropriate **policies to safeguard and designate as "confidential and proprietary"** your valuable information including bidding, estimating, overhead, and profit formula; labor, material, and equipment rates; customer requirements and contact information; and vendor and supplier contracts;
- **Implement corporate-wide policies** which prohibit -- at a minimum -- secondary or part-time employment for a competitor and require disclosure of conflicts of interest;
- **Communicate regularly** with your key employees and corporate officers to ensure that they understand their fiduciary obligations; and
- Work with your information technology guru to **monitor employees' electronic communications** and develop an appropriate **document retention policy** to ensure that you retain emails and all bids prepared and submitted by your estimators.

If you have comments or questions about this Alert or would like to know more about how to protect against or prosecute this type of improper behavior, please contact Roy Cohen in our Construction Department or Jon Landesman in our Labor & Employment Department at: info@cohenseglias.com or 215-564-1700.



COHEN SEGLIAS PALLAS GREENHALL & FURMAN PC

United Plaza • 30 South 17th Street
19th Floor • Philadelphia, PA 19103

215.564.1700 www.cohenseglias.com