

Employment Agreements - When do you need one?
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The starting point for an employment relationship in Minnesota is “at-will,” meaning that an employer is free to terminate an employment relationship at any time for any reason (as long as it’s not an unlawful reason) and an employee is free to quit their job and go to work elsewhere, at any time and for any reason, even directly in competition with their former employer. Those terms can change however if the parties agree that the relationship should be different than that. The best practice for modifying the employment relationship is in writing in an employment agreement. In either hiring a new employee, or agreeing to work for a new employer, there are several things to consider in negotiating the terms of an employment agreement that are different than the “at-will” standard that applies to most Minnesota employment relationships.

Non-Competition Terms. A common situation where an employment agreement is utilized is where the employer is seeking to protect their business from the employee later working for the competition. Non-compete agreements are generally enforceable in Minnesota subject to the employer being able to demonstrate a legitimate business need for such protection. This is an area that specifically requires a written agreement that is well-thought out in order to be enforceable. Use of a non-competition agreement does not need to result in the loss of the employer’s right to terminate at-will. To ensure enforceability, some agreements provide for compensation in some form during the period of the non-compete.

Confidentiality Terms. More common is the need for a protection of confidential business information such as sales and pricing information, customer data or internal compensation arrangements. Much of this type information is protected by statute under the Minnesota Uniform Trade Secrets Act regardless of whether there is a written agreement in place. A written agreement is useful to define more clearly what the employer feels it needs to protect, however, and can broaden the scope of what is protectable beyond what is included in the statute. With or without an agreement, the employer has to treat the information in a way that reflects it is considered confidential. Being careless with company data can cause it to lose protection with or without a confidentiality agreement in place.

Employee-Shareholders. It is not uncommon in closely-held businesses for employees to become shareholders or part-owners of the business as part of the transition process for the business or to reward the high achievers in the company. What many owners don’t understand, however, is that when employees become owners, the ability for the company to subsequently terminate that person if things don’t work out can be severely limited. Minnesota courts have held that in that situation, an employee-owner may have a “reasonable expectation of continued employment” which effectively takes away the company’s right to terminate at will. If a company is considering bringing in an employee as an owner, it is essential that an employment agreement be a part of the process in order to ensure that there is a process available to terminate the employee-owner (and buy-back his/her shares) if things don’t work out.

Highly Compensated or Highly Skilled Employees. Often times, highly compensated or highly skilled employees have the ability to negotiate terms that guarantee a certain length of

employment or limit the circumstances under which they can be terminated. Employees who are in high demand are often leaving a good position and looking for some level of guarantee as to the compensation they will receive if they make the jump. The best practice for employers in this type of situation is to preserve the right to terminate “at-will,” but at a predetermined price or period of continued compensation if a termination becomes necessary. While it’s not pleasant to continue paying someone who is no longer providing services, it is the better alternative to being forced to continue to employ someone who is no longer a good fit. The agreement should define the circumstances of when the employee’s behavior is so egregious that termination can occur and no additional compensation will be required.