

Hiring Government & Competitor Employees

When employees come to work for us directly from the Governments we work with, from clients or competitors, they may well have in depth understanding and knowledge of their previous employer's strategy, business operations, practices and systems. We should never turn this into an unfair competitive advantage.



Strategic recruitment practices are currently influenced, on the one hand by the 'baby boomer' generation that is set to retire en masse and on the other hand, by rapidly improving economic conditions. In response, it can be expected that there will be large number of new hires into a wide range of occupations. **These new employees will form a large part of the next generation of employees that will influence the operations of many companies for decades to come.** Given this context, it is important to assess whether firms are using fair and open practices to identify, attract and recruit a workforce from all segments of society according to merit and ethical principles. One aspect of hiring that is only discussed peripherally, but has a significant impact on recruitment, is the hiring of government and competitor employees.

Although everyone has a right to advance their professional career by seizing new opportunities within their area of expertise that does not mean that a company should proactively seek to hire individuals who hold a position of influence and/or have a unique set of skills and expertise that reside with a competitor. As certain sectors and regions are facing a shortage of qualified professionals, the competition for these individuals will intensify. The quest to find people with the right skills, in the right location and with adequate

performance levels may become a war for talent. The battle may be on, but that does not mean that human capital should be (ab)used to influence particular policy processes, to create a monopoly in a certain sector, or to obtain sensitive or classified information from competitors.

Recruiting in a highly competitive market presents a myriad of tactical and ethical choices. Some firms choose to be more aggressive in their recruitment strategies, ignoring ethical standards in the process. Others prefer to maintain effectiveness, not allowing the pressure of competition to completely cloud their judgment when it comes to maintaining integrity. Ultimately, when it comes to strategic recruitment, a company has to decide whether to be aggressive, effective or ethical. In an attempt to find a middle ground, companies often deploy different recruitment strategies, with mixed results:

Lateral Hiring – this refers to the hiring of someone in a position at the same organisational level or salary. In reality it reflects a company's strategy to identify, solicit and hire an individual or group of employees who are currently employed by another [competitor] firm or from the public [government] sector.

Strategic Talent Acquisition – this relates to the targeted acquisition of high performing teams

into a company from a competitor or the public sector. It is usually linked to a benefit from acquiring highly skilled human capital, whilst removing the same high-performing team from competitors. However, systematic inducement of multiple employees from a single company is unlawful when the purpose is to undermine a competitor rather than obtain the services of skilled employees.

Revolving Door Policy – this relates to the movement of personnel between the public (legislators and regulators) and private sector. In some cases roles are performed in a specific sequence, and sometimes they are driven by election cycles and change of governments. 'Revolving door' dynamics are often perceived to create an unhealthy relationship between government and the private sector, as it is based on the premise of reciprocated privileges and can easily result in regulatory capture.

The ethics behind recruitment highlights specific areas of concern, from how candidates are identified, how a position is presented to a candidate, and how interviews are conducted. **Unfortunately, there are no universally accepted values and ethical guidelines for recruitment.** While some companies have established their own codes of conduct, others tend to devise policies as they progress. This often arises from uncertainty over what a company's values are and what constitutes company ethics. Whereas, values are the deeply held beliefs that guide attitudes, actions, and the practical choices we make. Ethics are the specific standards and principles for how we ought to act.

In addition to balancing values with ethics, companies need to define how to associate ethics with effectiveness. For example, there are managers who are well aware that pursuing competitor employees is unethical, but they have no problem hiring an external consultant (head hunter) or a specialised recruitment agency to do the same thing. Outsourcing the process does not mean the company is in the clear if something goes wrong. On the contrary it can actually amplify certain risks. As such, it is extremely important to carefully select external associates and provide them with clear guidelines that are reflective of the company's ethical boundaries in recruiting.

Most people tend to think that a 'trade secret' has to be some kind of a secret formula that allows you to replicate a particular product, or a computer algorithm. In reality, it is more about an employee who has gained substantial knowledge of the employer's operations, strategy plans, and internal protocols during employment and then goes to work for a competing firm to perform similar tasks. What separates company trade secret from an employee's general knowledge, skills and experience? Unlike trademarks, patents, and copyrights that are protected by clearly defined protocols, trade secrets can be open-ended in their nature as they depend on circumstances in which they are learned and applied.

Therefore, employers must be cautious in soliciting or employing a competitor's or government employees where noncompetition agreements prohibit them from engaging in certain competitive activities for a given time period and within a specific geographical area. If an employer fails to inquire about a candidate's postemployment obligations and a new employee (un)wittingly breaches those terms, these situations can lead to costly and time consuming legal proceedings. In order to minimise those risks, the following points must be considered:

- Determine if there is a restrictive covenant, a non-compete or non-disclosure agreement between the potential employee and their current employer.
- Ensure that the new employee leaves everything behind - in order to prevent electronic data theft/fraud.
- Interview employees before hiring to determine whether they possess knowledge that their former employers consider to be trade secrets or confidential information.
- Be careful about provisions that provide for non-solicitation of customers and other departing employees.
- Duty of loyalty - a prospective employee should be given strict instructions not to engage in any competitive activities until they have severed their employment relationship with their existing employer.
- If a prospective employee indicates a willingness to act in an unlawful or unethical manner with respect to their outgoing employer, one should think twice about hiring such an individual.

Although, most companies are focused on how to attract talent from their competitors and government, very few stop to think how they can stop competitors from poaching their own staff. Abrupt departures of key staff can leave companies with few options, generally limited to post-termination restrictions, confidentiality agreements and garden leave provisions. Ultimately we have to accept that there is no magic formula; a company cannot stop a competitor from making an offer to their staff, but it can reduce the likelihood of them accepting the offer by being more proactive in keeping its staff happy.

Recruiting Opportunities	The Biggest Strategic Recruiting Challenges	Recruiting Trends that will Peak
<ul style="list-style-type: none"> • The competition for top talent intensifies • Recruiting finally adopts the practice of monetizing its business impacts • A metric-driven employee referral program becomes the dominant hiring source • A focus on becoming a serial innovation firm increases the need for recruiting innovators • Predictive metrics and the use of big data move from interesting to essential • Boomerangs become a primary target once again • Employer branding returns as the only long-term recruiting strategy • Accepting social media profiles in lieu of resumes opens the door to many passives 	<ul style="list-style-type: none"> • Retention problems will increasingly impact recruiting • College recruiting must be reengineered if it is to succeed • Speed once again becomes essential to remain competitive • The shortage of top recruiters will become evident • Limited resources will require position prioritization • Large firms must learn to compete with startups for talent • Business volatility makes workforce planning more necessary but more difficult • Finding high-impact technology will still be problematic 	<ul style="list-style-type: none"> • Competitive analysis is not yet a standard practice • Virtual reality simulations for assessment will gradually be introduced • Market research practices will eventually allow you to fully “know” your prospects and candidates • Hiring those without degrees or standard credentials will soon become more common • Firms must eventually begin to “map” their future talent pipeline • Personalized recruiting is on the horizon • Finding “their work” online will eventually become a key sourcing tool
<p>Recruiting Trends that will Continue to</p>	<p>Areas that will Continue to Diminish</p>	
<p>Based on “The Top 25 Recruiting Trends, Problems and Opportunities for 2014” article by Dr John Sullivan on 9 December 2013 for Ere.net (http://www.ere.net/2013/12/09/the-top-25-recruiting-trends-problems-and-opportunities-for-2014-part-1-of-2)</p> <ul style="list-style-type: none"> • The mobile platform continues to be a critical tool • Remote work continues to expand the talent pool • A data-driven approach to operations continues to be the benchmark standard • Accelerated internal movement is still needed • Live video interviewing steadily grows in acceptance • On-line candidate assessment continues toward the mainstream 	<ul style="list-style-type: none"> • Recruitment advertising and the corporate website • Sourcing becomes easier • Underperforming sources need to be deemphasized 	

Additional resources Further Reading

Step 1 Please refer back to Our Code of Conduct.

Step 2 If you would like to know more about Human Rights & Business, the following external links have been selected for your reference:

Institute of Business Ethics

The IBE promotes high standards of business practice based on ethical values. We raise awareness of business ethics through the dissemination of knowledge and good practice.

<https://www.ibe.org.uk/>

World Intellectual Property Organization: Trade Secrets & Employee Loyalty

It is the global forum for intellectual property services, policy, information and cooperation. Their mission is to lead the development of a balanced and effective international intellectual property (IP) system that enables innovation and creativity for the benefit of all.

http://www.wipo.int/sme/en/documents/trade_secrets_employee_loyalty.html

HR Magazine

For people-focused, forward-thinking, business leaders who want insight into and examples of business contextualised Human Resources in order to develop high-performing organisations.

<http://www.hrmagazine.co.uk/>

The European Business Ethics Network

It was setup to increase awareness about ethical challenges in the global marketplace and to enable dialogue on the role of business in society. They have 18 National Networks established in several countries is to promote ethics and excellence in businesses.

<http://eben-net.org/>

Society for Human Resource Management

It is the world's largest HR membership organization devoted to human resource management. The Society is the leading provider of resources to serve the needs of HR professionals and advance best practices.

<http://www.shrm.org/hrdisciplines/global/Pages/default.aspx>

Workforce

It is a multimedia publication that covers the intersection of people management and business strategy. Their network of senior-level human resources executives are the key decision-makers on talent management.

<http://www.workforce.com/>

Step 3 Do your own research on the Internet
