

## Starting a New Business in Competition With A Former Employer

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Business growth is good for everyone. Entrepreneurism is similarly good for us all. Yet, there are limits as to when and how a business's employees can "set up across the street" and compete with their former employer. One of those limits is the duty of loyalty an employee owes to the employing business.

In Minnesota the courts have held that "an employee's duty of loyalty prohibits her from soliciting the employer's customers for herself, or from otherwise competing with her employer, while she is employed." In fact, even telling a customer of the intent to open a new competing business could be a breach of this duty of loyalty. A breach of the duty of loyalty could possibly occur even if the idea of the employee starting a new business actually came from a customer of the old business.

The initial issue is one of timing. The employee is at grave risk if the employee tells any customers, or other employees, of their intent to form a competing business before they have resigned from their current employment. Yet, the employee can take some steps to compete before they have left the old employer. In Minnesota, "Employees who wish to change jobs or start their own businesses, however, should not be unduly hindered from doing so. An employee has the right, therefore, while still employed, to prepare to enter into competition with her employer." The employee may form a limited liability company, secure financing, sign a lease, print stationary, and do other business start up activities that do not amount to soliciting customer or other employees for involvement in the new venture.

"While it is true that an employee may take steps to insure continuity in his livelihood in anticipation of resigning his position, he cannot feather his own nest at the expense of his employer while he is still on the payroll."