

## Starting a Business--and Not a Legal Battle

How to quit your job, compete with your old boss and not get sued in the process

By Geoff Williams

February 26, 2007

URL: <http://www.entrepreneur.com/startingabusiness/startupbasics/legalissues/article175142.html>

Some bridges are merely burned. Others are scorched.

Elaine Browne and her business partners, Federico Lupo and Dario Arias, knew the latter applied to them shortly after opening their New York City hair salon, Trillium. "We found out we were being sued during our second week when the affidavit came," says Browne. "We were shocked."

The reason for the lawsuit? Browne, Lupo and Arias, sensitive types who will only cop to being in their 30s and 40s, worked together for years at a hair salon known as the John Sahag Workshop before collectively quitting and creating a new company--effectively competing with their former salon.

It's a common gripe among many business owners. You hire employees, teach them everything you know and groom them for a long future at your business. Then one day, they're out the door, starting their own business with an indirect mission: to compete with you.

If that's a reasonable fear among veteran entrepreneurs, it's also understandable why a novice entrepreneur might view the situation differently. After all, you signed up to work at a business for a paycheck, stability and experience--but not necessarily for a lifetime commitment. Why shouldn't you be able to quit and start your own business in the same industry? Once you've decided to do so, what should you do--forget everything you've learned? And most importantly, how do you get out without being accused of stealing clients and knowledge and becoming the enemy?

Fortunately, it can be an easy process. If you and your boss are friends, and your employer has treated you well, chances are you can depart by using a few simple strategies. "Be upfront and aboveboard in all of your dealings," suggests David Minor, director of the Neeley Entrepreneurship Program at Texas Christian University. "Do not steal customers, employees or take trade secrets. More often than not, there is plenty of business and people elsewhere, and at the end of the day, we all have to get up in the morning and look in the mirror."

It's an entirely different situation, of course, if you and your boss don't get along, or if you're working for a major corporation and have never really met your employer. That doesn't mean you should be a jerk or unethical when you leave, but as Minor says, you don't have to worry about whether you're departing as friends. "Certainly you would want to honor any legitimate non-compete agreements, but more often than not, those aren't binding anyway," he says, "and are simply put in place to 'psychologically handcuff' an employee."

When Doug Worple, 42, left the huge conglomerate Procter & Gamble to open his advertising firm Barefoot Advertising, he knew that P&G's policy was to wait one year before working with any ex-employee who had started an advertising agency to avoid impropriety. "You don't want a brand manager telling someone in [the] advertising [department] that, 'Hey, I can increase your budget by five million if you send a sweet chunk of business my way after I'm on my own.'"

So Worple created an exit strategy that many entrepreneurs would do well to follow. That is, adapt to what your ex-employer wants--if it isn't unreasonable--and try to leave on the best of terms. If you do, you may end up attracting your former employer as a client. When Worple left, he was forthcoming about his reasons for leaving and asked a vice president to write letters of introduction for him to various advertising associations and smaller, independent advertising agencies that had no relationships with P&G. In other words, he used his networking skills to help him out the door.

One year later, when he solicited work from P&G, he felt confident enough to go to people within the company he didn't know. "I didn't want to ask people for a favor and put them in an awkward position," says Worple, who was able to leverage his experience to get business with Procter & Gamble, but with people he knew wouldn't feel beholden to him.

Today, Barefoot Advertising in Cincinnati has 52 employees and brings in approximately \$10 million in revenue a year. Not only does P&G send business Worple's way, but "a lot of Procter people who have worked with us have gone on to other companies and initiated work with us," he says. "If we had burned that first bridge and not done work with them, they wouldn't be [clients] either."

## The Blurry Legal Line

Of course, Worpel's situation was a little easier than some. It's one thing for an employee to leave a company as large as a city. But when Browne, Lupo and Arias left, they constituted 30 percent of the salon's workforce. At first blush, it may seem like banding together and leaving their former employer behind was cruel or ungrateful. But there's one more detail: They left after their boss died.

John Sahag's offspring are the ones suing Trillium. "They were very upset that we didn't stay," says Browne. "From their point of view, they're not stylists themselves, even though they may be very good business people. They can't perform the service, and we're their means of making a very good living. I guess the fact that when John was sick, we were so loyal, they presumed we'd stay, and they were a little bitter when they learned that we had plans to move on." Browne adds that in the three years their employer battled lung cancer, his kids never discussed with her or her partners the idea of sticking around after he was gone.

Nevertheless, they've instituted a court order barring Browne, Lupo and Arias--who dedicated a combined 34 years to the salon--from recruiting former customers of the John Sahag Workshop. In addition, they're charging that Lupo and Arias took personal hair-color formulas of 933 customers with them, including those of celebrities like Gwyneth Paltrow, Jon Bon Jovi, Demi Moore, Kirsten Dunst, Jennifer Aniston and Debra Messing.

The Sahag Workshop even sent out a letter to each of its clients stating, "John Sahag's former employees now working at Trillium are prohibited by the court from soliciting your services, contacting you or providing styling and/or coloring services to you until any further order of the court." When *The New York Post* reported on the melee, at least one customer was outraged, saying, "I've known John for 20 years, and he would never have behaved this way."

So now, a little more than a year after opening, against the backdrop of cutting and coloring hair, Browne, Lupo and Arias are still embroiled in a court case--the last thing any entrepreneur hopes will happen when they start their own business.

If you're planning to leave your employer to compete with him, it's not a bad idea to consult an attorney, which is what we did for this article. Peter Pizzi, a partner at Connell Foley LLP, with offices in New York City, Philadelphia and New Jersey, says that, "Basically an employee who does not have a restrictive covenant--that is, a written agreement on where you work in your post-employment--should feel free to leave and compete with the employer. But the employee should be careful not to actively compete with the employer before he or she leaves."

That may sound logical, but it's important to know the guidelines, which could be easy to violate. "You should absolutely not tell clients that you're leaving before you've left," says Pizzi. "That would be viewed as a dereliction of loyalty." He also says that you shouldn't take any assets that you used on behalf of your current employer, such as customer lists.

What you can feel free to do--on your own time, of course--is set up a corporation, purchase a domain name, and "take any preliminary action to create the business that you will activate once you leave," says Pizzi, citing examples like buying space in the phone book and purchasing promotional material. But even that can be tricky, as Pizzi points out: "You don't want to purchase advertising in a way that interferes with any vendor your employer currently uses."

## Career Karma

Sure, your bending over backwards to be as ethical as possible may not help if your employer doesn't take your leaving well. But it seems likely that if you are above board with your employer, things will work out in your favor.

Tracy L. Coenen learned that when she left her old company, Peters & Associates, a small forensic accounting firm in Milwaukee, to become an even smaller forensic accounting firm in Milwaukee. Coenen, who owns [Sequence Inc. Forensic Accounting](#), a one-woman accounting firm, likens herself to the characters on the TV series *CSI*, only instead of examining fly larva on a corpse, she's following data sheets to solve crimes like identity theft and falsified records.

Before starting her own firm, Coenen worked for her boss--John Peters--for two years. He taught her everything he knew. And then she left.

She didn't plan it that way, though. "We couldn't work together," she explains. "I wanted a more flexible work environment than he had, and it was personality-based. We just weren't meshing."

Coenen was 27 then; her employer was 47. She's now 34, and with the passage of time, Coenen says that they get along very well even though she directly competes with her former employer. And even though they're direct competitors, if either of them is too busy and has to turn a client away, they recommend the other. They've even collaborated on a few projects. But it never would have been that way, Coenen concedes, if she had trashed her employer and staff on the way out or raided the office supply room before leaving.

Burning bridges also isn't a good idea since you never know when you might run into your previous employer. Coenen, for instance, occasionally finds herself in court as, say, a witness for the defendant--and on the other side is her former employer as a witness for the prosecution. The first time that happened, "it was weird," she says. "But I think we've worked well together since I left because we really respect each other. Besides, he got me started in this business and taught me everything I needed to know to begin my business."

If things with your former employer don't go as well as they did for Coenen, the laws in some states are on your side. In New York City, where Trillium is fighting its legal battles, the courts tend to side with new entrepreneurs, even those who have

signed restrictive covenants. "The courts don't like to enforce agreements against competition," says Prizzi. "They're pro-enterprise and capitalism, which are the basic values of America."

He also says that on the other side of the country, California doesn't enforce restrictive covenants at all. He says--and stresses this is not necessarily his opinion--that some people feel California's way of dealing with employees leaving to become entrepreneurs or to take their knowledge to work for someone else gives the community greater access to innovation. "That's served Silicon Valley very well, some would say. Employees can cross-pollinate and bring skills that they learned at Yahoo! to Google."

There's also another positive to starting your own business using the knowledge you gained while working for someone else, says Prizzi. If you don't have a carbon copy, you might be able to start a company that "can ultimately enhance both sides. The employee may leave and just do something a little different. They may consider taking their business in a slightly different tilt that the current employer isn't interested in."

But what if you quit, do everything right and are still sued? Sure, you may have to worry about losing your shirt amid legal fees. But knowing that you've done everything you can to leave ethically and on good terms may at least help you sleep better at night.

---

Copyright © 2007 Entrepreneur.com, Inc. All rights reserved. [Privacy Policy](#)