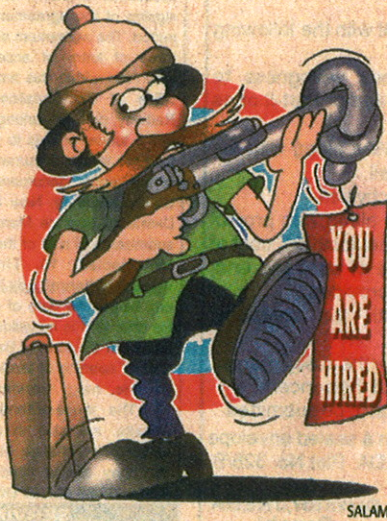


No-poaching bond for outgoing CXOs

Trend Seen In Fin Services, Drug Cos, PEs & I-Banks

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SALAM

WHEN the CEO of a Delhi-based commodity trading company put in his papers, his resignation was accepted only on one condition. The CEO was asked to sign a no-poaching agreement restraining him from taking other senior executives and managers to the new company. A senior executive in a Bangalore-based private equity firm, who recently quit, was also made to sign a similar agreement.

Such is the desperation to retain talent in some sectors that what was till now an informal, friendly understanding between an employer and his outgoing employee is being turned into a formal agreement. Senior executives are being asked to sign a legal document that says they will not poach from their former workplace. Hectic team

movements in the recent past have stimulated companies to adopt such measures to ensure that any change at the top managerial level does not create havoc in the normal functioning of the company.

Says head-hunting firm Executive Access managing director Ronesh Puri, "With team movements becoming quite high profile, business entities are now making the terms more stringent. Whereas earlier, it was discussed across the table verbally, CXOs are now made to sign on the dotted line."

Senior executives in the past have often poached entire teams or at least 5-6 key people to their new company. In some cases, the numbers have also ranged between 15 and 20 employees. A case in point was the movement last year of four senior people from CLSA to India Infoline.

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Some adding time clause to no-poaching pacts

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IT'S largely in financial services and pharmaceutical firms, private equity funds and investment banks that these no-poaching agreements are being signed now. "It's called the non-solicitation clause and is largely being signed in knowledge-driven sectors like IT, pharma and trading firms. Senior executives involved in large deals or projects take decisions sensitive to the business of an organisation. Therefore, companies want to make sure that no further loss is caused to them by way of losing more key executives," says executive search firm Stanton

Chase India MD R Suresh.

Head-hunters also say companies are adding a time clause to the no-poaching agreements. For instance, in some cases, they are not allowed to poach employees from their previous company for two years. "Companies do not shy away from taking legal action against employees if the contract is breached. It can demand monetary compensation as well," said the Mumbai-based consultancy Cerebrus Consultants' founder and CEO Anita Ramachandran.

The timing of such clauses may vary and the more crucial an exec-

utive is to the company, the more stringent is the agreement. CXOs can be asked to sign such agreements either at the time of joining, at the time of being offered special bonuses or ESOPs, or at the time of exit. In some sectors, companies have a 'gardening period', where the employee is asked to join the next organisation only after a gap of three months.

But are these non-poaching agreements legally enforceable. Says Khaitan and Partners partner Shally Maheshwari: "Action against team members is difficult. But companies can claim damages from senior executives who have signed these no-poaching clauses for breach of contract. However, its true that the remedy for damages is not effective."

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