

Employee moonlighting: Should you ban it?

Issue: One in 20 employees moonlights, and a hot labor market offers employees in your shop new opportunities to work second jobs.

Risk: Moonlighting can create tired, distracted employees, plus spark conflict-of-interest problems and liability risks.

Action: Prevent problems before they crop up. Draft a policy that doesn't ban moonlighting but stops its negative effects.

During the go-go Internet boom, employees dumped their day jobs to launch Web businesses. But after the dot-com bust, many would-be entrepreneurs are playing it safe, starting new businesses or taking second jobs while keeping their full-time gigs.

These days, about 6 percent of U.S. employees hold two or more jobs, up from 4 percent two decades ago, say government statistics.

Advice: If you don't have a moonlighting policy, draft one. An outright ban on moonlighting will cause resentment and likely stand on shaky legal ground.

Many states protect employees from job actions related to their off-duty conduct. But you can still restrict employees from taking a second job if it would create a direct conflict of interest.

Your policy should aim to solve moonlighting's biggest risk areas: productivity, safety, conflicts of interest and misuse of company property. Ask yourself these three questions when preparing a policy:

1. "Are safety and performance our main concerns?" If so, use performance and attendance policies to do the job. Make it clear that moonlighting employees must meet productivity standards, including overtime.
2. "Are we concerned about conflict of interest?" If so, require employees to gain management's approval before taking a second job. Require key staff to sign nondisclosure policies. Make it clear that employees can be fired if they moonlight for competitors or use proprietary information in their own business.
3. "Should the policy cover the whole work force?" If your concerns are limited to a few key people, include no-moonlighting provisions in their employment contracts.

Final tip: Never let employees work for themselves after hours on your premises. Reason: You'll be on the hook for workers' comp. Plus, you could face liability for the quality of work done with your equipment. That's because anyone injured by a product made with your equipment, even if it's made by your employee after hours, can sue your organization for product liability.

Sample moonlighting policy

For a free copy of our report, *How to Write a Moonlighting Policy*, which includes two sample policies, go to www.hrspecialist.net/handbooks.