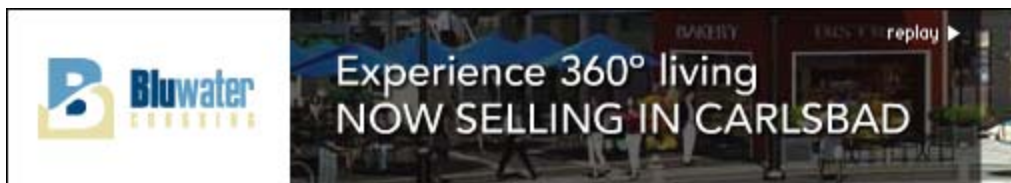


Los Angeles Times



<http://www.latimes.com/business/la-fi-inbox7-2009apr07,0,4856427.story>

From the Los Angeles Times

IN BOX

Unpaid worker can't even accept free coffee

Wage and workers' comp laws could apply to helper if any compensation is involved.

By Karen E. Klein

April 7, 2009

Dear Karen: A customer of my coffee shop would like to work for me without pay. Can I let her?

Answer: You can indeed take up her kind offer, if she agrees to absolutely no compensation. This means not even free coffee, said J. Kevin Lilly, an attorney at employment law firm Littler Mendelson in Los Angeles.

"With no expectation of compensation, the person is not legally an employee and you don't have to pay minimum wage or insure that person under workers' comp," Lilly said.

Ask your customer to acknowledge in writing that she's contributing her time with no strings attached, said Marjorie Jobe, an attorney with Jobe Law Firm, based in El Paso. And make sure your general liability insurance covers her if she is hurt in the shop.

Competing with a former employer

Dear Karen: I work for a firm that provides document retrieval for law firms. Can I start a company doing the same thing?

Answer: If you haven't signed a noncompete agreement, you probably can. And even if you did sign such an agreement, it may not hold up in a California court, said Mark Terman, partner-in-charge of the employment law practice group at Reish Luftman Reicher & Cohen in Los Angeles.

But you must make sure you're not using property or trade secrets that belong to your current employer.

So if you plan to sell to your current clients, talk to an attorney.

"If customer identification and qualities can be easily duplicated by looking in a publicly available directory or trade association list, and then making a few phone calls, there is probably no trade secret," Terman said.

"If it is not that easy," he said, "consult an attorney before you plan a new business around information that may be your former employer's trade secret, only to be blocked later by court-ordered injunction."

Disputes are common over whether client lists are trade secrets and whether an exiting employee can be blocked from using them, Terman said. And they're costly.

Small businesses aren't paranoid

Dear Karen: I've heard that small-business owners are often audited. How can I avoid that?

Answer: A recent study from Syracuse University shows that the Internal Revenue Service audits small businesses at nearly twice the rate they audit larger corporations.

And small-business audits have risen recently, with 41% more such audits in 2007 than in 2005.

Several things may trigger an audit: a major change in revenue, a home-office deduction, excessive write-offs for travel or entertainment expenses, filing a Schedule C and even filing early.

Make sure your home-office deduction is for a dedicated office space within your home that is used exclusively for business, said Cliff Hersman, tax partner in the Seattle office of BDO Seidman. Keep receipts for all expenses and don't fall into the trap of recent political

appointees who had unreported income or underpayments of self-employment taxes and tax on household help.

Got a question about running or starting a small enterprise? E-mail it to [inbox.business@](mailto:inbox.business@latimes.com)

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