



## I quit... six months from now

*The law says you have to give an employer two weeks' notice, right? Not so fast*

**Y**ou gave your two weeks' notice, packed up your collection of *Star Wars* figures and refrained from flipping your boss the bird on the way out the door. All that's left for you to do is set up a competing business and crush your former tormentors with your superior acumen. But wait: before you mete out such vindictive retribution, you might want to consult your lawyer. Two weeks doesn't always cut it. And it might cost you.

The Ontario Court of Appeal recently upheld a decision to award GasTOPS (a company that provides engineering consulting services for maintaining jet engines and develops software to assess engine performance) \$12 million, plus interest and legal costs. All because some former

employees failed to give adequate notice. The suit dates back to 1996, when two employees resigned on the same day, giving just two weeks' notice. Two more employees followed three days later, and 15 more followed in a matter of months. The emigrés started a competing firm, MxI Technologies, and before long they'd won over many of GasTOPS's largest clients.

But revenge wasn't sweet. MxI was ordered to disgorge 10 years of profits. Among other things, the trial judge ruled that the two weeks' notice the employees had offered was woefully insufficient. The appropriate notice period? An astounding 10 months.

This case is uncommon but not unique. Courts have established that notice periods should allow the employer sufficient time to hire and train replacements with minimal disruption to the business. "Six months was the previous high-water mark for a notice requirement for a senior manager," says Connie

Reeve, a partner with Blakes specializing in employment law. That case also involved employees striking out on their own to compete with a former employer. The manager had given about a month's notice, and two colleagues followed her out the door. The former employer sued and eventually won a \$200,000 judgment for damages.

Before you resign, ask yourself these five questions:

### **Have I already agreed to give a certain amount of notice?**

"The first thing you would want to do is take a look at your offer letter or employment agreement," advises Reeve. Such documents often specify a required notice period—although you may have forgotten it. Generally, junior employees can get away with providing a couple of weeks, but longer periods may be required for employees who exercise considerable discretion or power in their jobs.

### **How difficult will it be to replace me? You may be deemed**

a "key employee" even if nobody reports to you. The GasTOPS evacuees were all highly skilled technical employees, and while not all were managers, they all worked with minimal supervision. They also negotiated contracts directly with customers. Consider the time it will take your employer to recruit, train and familiarize your replacement with clients and products. And if you're in the middle of a crucial project, be prepared to stick around to see it through.

**Why am I leaving?** It's one thing if a sudden illness leaves you unable to work. It's quite another if you're involved in a mass exodus. "Leaving to compete with a startup business, or otherwise, would likely attract a greater amount of notice—but especially a startup," says Ronald Minken, head of the boutique employment firm Minken Employment Lawyers in Markham, Ont. He adds that with GasTOPS, "the fact that 75% of the employees left to start up a competing business was the clincher."

**Will my departure harm my employer?** Employers rarely sue workers for providing inadequate notice. When they do, generally it's because they suffered significant harm. "The only thing making these cases worth litigating is that the companies lost so much money," says Reeve.

**Am I being fair?** As a rule, departing employees have every right to use their knowledge and skills to compete directly with their former employer. But courts draw the line at what they call "unfair competition." If you're using surreptitiously photocopied client lists to solicit new business, you've probably crossed the line.

When in doubt, consult a lawyer. Or broach the subject with your current employer. Often the dilemma will resolve itself. "Quite often our recommendation will be, go to your employer and say: 'I plan to leave. How much notice do you want?'" Minken says. "The employer may be very surprised and say: 'Forget the month, you're gone now.' And that happens frequently." Employers, after all, can be vindictive too. —MATTHEW McCLEARN