LOS ANGELES & SAN FRANCISCO
Daily Journal
www.dailyjournal.com
TUESDAY, JUNE 30, 2026

PERSPECTIVE | GUEST COLUMN

When executives leave: The new corporate crisis

As executive departures become more frequent, employers must be prepared to address the legal and business risks that can follow, from protecting trade secrets to managing key-person succession.

By Edward E. Shapiro, Joseph Gallagher and Jewel K. Tewiah

Shutterstock

On June 22, Alphabet suffered its worst trading day in more than a year. Its shares fell roughly 5% after reports that two prominent Google AI researchers were leaving for OpenAI and Anthropic, wiping out approximately $225 billion in market value.

This bad day for Alphabet underscores a growing trend in employment law. Gone are the days when an executive departure was a rare event, involving little more than a letter, a farewell party and a new search process for their replacement. Now, when an executive leaves, it risks growing into a corporate five-alarm fire: Are they going to a competitor? What trade secrets are in their head? Does anyone else know the recipe for the "secret sauce" that makes the company valuable? Did we protect against "key person" risk? Will we keep our customers? What will the investors think? How can we manage public relations and messaging?

And the harsh truth is that these crises have become more commonplace. In the United States, 168 new S&P 1500 CEOs were named in 2025, the highest number since 2010, while average departing CEO tenure fell to 8.5 years. A similar October 2024 survey found that 56% of senior executives reporting to the CEO, excluding chief human resources officers, said they were likely or extremely likely to leave their roles within two years, with 27% saying they were likely to leave within six months. In our practice, we see both sides of this equation: companies adopting ever more aggressive retention plans to lock in their leaders, and executives bristling at what they see as unfair restraints on their professional lives.

Several converging factors made executive departures evolve into such significant events. Causes range from increased economic and political volatility, regulatory uncertainty, inflation, activist-investor scrutiny, and reduced board patience with weak growth or slow adaptation to AI-driven transformation. But the key thread stitching these causes together is that the barriers to entry for new businesses have fallen considerably across multiple industries.

First, it has become far easier to obtain financial capital to fund new businesses, thereby giving more new ideas space to breathe and develop. At the startup level, incubators and accelerators like Y Combinator have seeded thousands of businesses, allowing founders access to capital and infrastructure to bring new ideas to the marketplace. At a more mature stage, private equity has experienced remarkable growth. According to a recent McKinsey report,

North American PE funds raised $432 billion in 2025, an 8% increase from 2024. Over the same time frame, buyouts and growth deals valued above $500 million grew by an astonishing 44%, with a global aggregate deal volume exceeding $1 trillion. Private equity deals, both entrances and exits, often involve executive entrances and exits — either because someone is dissatisfied with a deal, a sponsor desires new leadership or an outside executive is eager to carve out a new opportunity with a company on the rise.

Second, the capital and infrastructure needs of companies have evolved, making individual executives more important to the overall success of a company. Startups need technology stack, personnel and organizational guidance, not factories or expensive industrial architecture. As a consequence, much of the most competitively sensitive information a young company might have is tied up in its processes and network (and therefore lives in people's minds and on their laptops) rather than in expensive pieces of machinery located in rented warehouses. As companies, especially technology companies, grow, the need to attract and retain top talent is of existential importance.

Third, business has moved faster than the law (as it always does), and the law is struggling to balance the interests of companies in safeguarding their trade secrets with the fundamental liberty interests of executives and other employees to control their careers. California is a unique forum for this struggle. Silicon Valley remains the primary home for technological innovation, and the state has doubled down on its antipathy towards restrictive covenants. Subject to narrow statutory exceptions, California generally voids contracts that restrain a person from engaging in a lawful profession, trade or business. Cal. Bus. & Prof. Code §§ 16600(a),16601, 16602, 16602.5. Recent amendments make it unlawful for employers to impose non-competes outside statutory exceptions or that are not narrowly tailored to protect identifiable trade secrets, and create private rights of action to enforce these rules. *Id.* §§ 16600(b)(1), 16600.1(a), 16600.5(a), (e).

Courts take these protections even further by scrutinizing employer efforts to restrict how employees use information learned simply by working for a former employer. *See 3D Sys., Inc. v. Wynne*, 2025 WL 886958, at *10 (S.D. Cal. Mar. 20, 2025) (voiding confidentiality agreement because it broadly restricted former employees' use of non-trade-secret confidential information); cf. *Wanke, Indus., Com. & Residential, Inc. v. Keck*, 209 Cal. App. 4th 1151, 1180-81 (2012) (holding stipulated customer-solicitation restriction enforceable to protect former employer's alleged trade-secret customer information); *see also xAI Corp. v. OpenAI, Inc.*, 2026 WL 1718645, at *1-4 (N.D. Cal. June 15, 2026) (dismissing trade-secret and unfair-competition claims because allegations of employee departures, retention of confidential information and competitor hiring did not plausibly show that the competitor induced, knew of, actively acquired, disclosed or used any trade secrets).

It is unlikely that any of these factors will disappear or that the trend towards complexity reverses. For that reason, we have seen a marked increase in our clients planning in advance to reduce the risk associated with departures. Sophisticated companies and executives should focus on (i) succession planning; (ii) having clear, and commercially reasonable, employment agreements that spell out rights and level set all parties' expectations; (iii) maintaining written records of critical institutional knowledge and an appropriate level of redundancy; and (iv) maintaining open lines of communications with boards and investors so they are not taken by surprise. While executive departures can be multidisciplinary crises, they — like all crises — can be managed.

Edward E. Shapiro, Joseph Gallagher *are partners, and* **Jewel K. Tewiah** is an associate at Glenn Agre Bergman & Fuentes.

Reprinted with permission from the *Daily Journal*. ©2026 Daily Journal Corporation. All rights reserved. Reprinted by ReprintPros 949-702-5390.