



## **POACHING: A RECRUITMENT STRATEGY & ITS ETHICAL ISSUES**

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### **Abstract**

*It's generally accepted among business leaders that "poaching" or hiring a competitor's employees violates an unwritten rule of business and may be unethical. A new research paper concludes that as long as their actions are not deceptive or illegal, companies that intentionally identify, contact and offer employment to a rival firm's employees are within the bounds of ethical behavior.*

*In "The Ethics of Lateral Hiring," a Vanderbilt professor who specializes in strategic human resource management suggests that the practice of "poaching" other companies employees should be an accepted or even encouraged form of business competition.*

*The high growth rate in sectors like Technology and Retail, existing talent crunch and the increase in the number of start-ups are the main reasons for the rising challenges in recruitment. Poaching, as a recruitment strategy, has been debatable. Some hold the view of it being unethical and illegal. But, poaching is a wide-spread practice and companies not accepting to the fact are losing their employees to their competitors. There have been instances in the recent past where Non-Compete or Non-Solicitation agreements have not worked in favour of companies. Poaching is ethical as long as the intention is not to capture the employer's customers or to sabotage the business operations.*

*This paper throws light on those practices used by various managers to hire employees from their competitors engaging themselves in unethical behavior of talent raiding.*

**Keywords: Poaching , Recruitment, Ethics, Recruitment.**

### **INTRODUCTION**

This is an ethical dilemma companies are in when filling niche positions. It was towards the nineteenth century that the employer-employee relationship shifted to a voluntary relation, where the power is distributed.

It has been defined as '*the intentional actions of recruiters in one company to identify, contact, solicit and hire a currently employed individual or group of individuals away from another company.*'

Poaching is a wide practice, it accounts for 30 percent of the movement in labour. The sectors like IT, technology, retail etc. are booming, NASSCOM and McKinsey predicts that the jobs technology space will increase ten-fold from the current 60,000 professionals to over 6 lacs people by 2015, and the recent increase in the number of start-ups is also fuelling hiring. Adding to this, there lack of readily available talent in India.

Poaching should be accepted, and even encouraged, to make companies more competitive. Moreover, any sort of Non-Solicitation agreement between organisations is unjustifiable under the current socio-economic conditions. The Non-Compete agreement between the employer and the employee is not legally enforceable. Organisations can't bar an employee from venturing out of the organisation. Employees are to be treated as free people and not as subjects or assets that a company owns. There is no ethical issue involved with poaching; the final employee always has the discretion to reject the offer. Poaching can, in a free market, help organisations to put their assets to the best use.

As offshore outsourcing goes mainstream in India, multinationals are hiring Indians to head their teams in foreign markets. Notably, Accenture and Capgemini are increasing poaching employees from their Indian rivals, like TCS, Wipro, and Infosys, to compete more effectively against these companies.

When Jet airways restrained its pilots from joining Sahara, on the grounds that it had made considerable investments in training them, the court ruled in favour of the pilots stating that the skills and the knowledge acquired are a property of the pilots and they were free to take up employment with Sahara.

The ever increasing competition amongst companies, high growth rate, especially in sectors like IT technology & services, recent increase in the number of start-ups, rising concern due to Talent Crunch are the main reasons for increase in Poaching



as a recruitment strategy. Multinationals are eyeing the right talent who can hit the ground from day one. Companies are looking to stay ahead by differentiating on products, processes, technology and a host of other things, hence require the right skill sets and knowledge. The high rate of growth in sectors like, technology is creating more and more jobs. But the readily employable graduates in India are less than 30%. This rising gap between the skills required and that is available is creating the need for HRs to look for talents in other organisations. Companies, for example Oracle, Hewlett-Packard and Cisco, are diversifying into other businesses; this is increasing competition in an industry.

Poaching becomes unethical or illegal when the candidate, for a job, is misled by a company about the job being offer. Some practices associated with poaching cross the line when the employee is hired to steal information or clients related to the employer. Anti-poaching agreements are relevant when two organisations are engaged in joint-venture.

Employees are poached from 'vulnerable' companies. The real issue lies in the employer-employee relationship; it is a failure of the company to retain its employees. The reasons could vary from the pay and benefits to the whole employee proposition or because of their bosses.

The HRs should pick up signs displayed by employees at work. The most frequent sign is change in habits related to work, i.e., there is lack of engagement with projects or colleagues, large number of absences, getting up-to-date information on expense accounts.

Companies have been taking several measures to retain and attract employees by benchmarking on their employment brand against the competitors. Being competitive in pay and benefits and in the whole employment proposition could be the key. Long term incentive plans tied to the success of the business as a whole and succession planning could send a message to the employees that they are significant role and are valuable to the success of the business. Employees also leave because of their bosses, to retain employees, the managers should be effective. Knowledge sharing and trainings such as, Supervisory training, Leadership training could instil useful management skills.

#### **RECOMMENDATIONS BY NASSCOM TO COMPANIES**

NASSCOM has advised companies to not to resort to Poaching, it has been working out strategies to deal with situations where a whole of a team is wiped out or when the intention is to sabotage the operations. NASSCOM has recommended companies to follow a standardized exit and on-boarding process and ask for relieving letters from the new joinees.

There are three important stakeholders, Organisations, Educational Institutions and NASSCOM. Steps need to be taken collectively to reduce the gap between available talent and required skills. Effective education and training in institutions is the need of the hour. The stakeholders should work out strategies to formulate the curriculum, specialised courses, offer more practical exposure, guest lecturers from veterans to the students.

#### **ETHICS OF LATERAL HIRING**

Gardner, Hart David and Stansbury Jason analyze the history of employer-employee relationships, from medieval statutes restricting worker mobility and colonial indentured servitude to recent allegations of secret agreements among Silicon Valley companies in their quarterly publication of business ethics.

They conclude that while employers may feel betrayed by departures, workers are legally and ethically entitled to pursue opportunities that arise elsewhere.

The study makes the cases that by attempting to block poaching, companies in effect are transferring wealth from employees to themselves, since they obtain employees' labor at a lower price and deprive the workers of higher earnings elsewhere.

"There's a temptation to look at poaching as something unethical," Gardner says. "But that implies a certain ownership of employees and their skill sets. You don't own them. To the contrary, companies that try to prevent lateral hiring of employees are actually the ones being unethical."

They also may be violating the law. Some legal analysts say that gentlemen's agreements with competitors to prevent workers from changing jobs may violate federal antitrust laws.

While some executives may think poaching is practiced by only a few corporate pariahs, the researchers say lateral hiring—a euphemism for poaching—is widespread. Federal Reserve Board economists estimate that of the 4 million workers who



change jobs in a typical month, 80 percent are recruited by their new bosses. That suggests lateral hiring may provide a way for human capital to flow most efficiently to the places it is needed, helping drive economic growth.

At the same time, Gardner recognizes that employers have an interest in retaining critical talent and insists there are ethical ways to thwart poaching.

“What they really should be thinking about is what sort of relationship they have with their employees,” he says.

In particular, they should concentrate on promoting more symmetry—that is, in addition to expecting workers to be loyal; they should be more loyal to workers. Two key types: relational loyalty, which results from better bonding between workers and managers, and ideological loyalty, in which the employer and the workforce feel joined by a common purpose.

In highly competitive markets, it’s become the norm for companies to eye the best talents from rival organizations. The debate over whether employee poaching is ethical continues to rage—and a company’s stance largely depends on which side of the fence it finds itself on.

### **REFERRALS AND POACHING: WHAT’S THE DIFFERENCE?**

So, how different is poaching from an employee referral system? In the latter scenario, you are also asking someone working in another organization if he or she is interested in an opening. The difference is that in an employee referral system, it is an employee who is speaking on behalf of the employer. The employee cannot dangle the carrot of huge salaries. There is no guarantee that a candidate referred by an employee will be hired by the company. The employee has no authority to bargain, and the final call is made by an employer. If this is not the case, and the employer is influencing an employee to convince a candidate from another company, then it is again poaching.

The motive in poaching is to kill the competition, and render the other organization weak and ineffective. Employee referrals, when done right, operate within the framework of established relationships. An employee asking a good friend or former colleague is considered ethical by most companies.

The employee referral method is more ethical than using recruiting agencies with bad value systems. In you plan to use an agency; you should make sure you use an organization that utilizes ethical standards in line with your own policies. Find out what strategies they use in recruiting potential hires and how they screen employees before hiring them. When a company is pursuing a great candidate, it presents its most impressive side, but a company should not forget to make sure that the candidate is the right fit for the job description on hand. There’s no point having a great candidate who is not fit for a specific role.

### **ACQUIRING NEW TALENT**

Employers and recruiters know that it is not always about the money. Great candidates need great opportunities. They seek recognition and leadership roles, and a sense of excitement about a new opportunity. Employers typically offer these apart from money to acquire new talent. They identify what the candidate missed at the earlier company and seek to compensate for it. Recruiters often give real examples of employees in similar situations of the candidates who are now doing very well. Instead of just giving a job description, there are testimonials, videos and the company’s culture all listed out to draw the candidate’s attention.

### **RETAINING TALENT**

When it comes to protecting employees from potential poachers, employers should take care to keep their best talent happy. Managers and their teams should be rewarded if they retain good employees. Keep track of recruits who have patterns of quitting and take pre-emptive action. Employees need to be motivated both monetarily and non-monetarily, and benefits such as flexible working hours or vacations and work-from-home options help to retain staff. More importantly, the employee needs to be given work that is fulfilling and exciting; stagnation is a big no-no.

### **CONCLUSION**

This does not mean you should not look for good candidates from other organizations; you just need to be ethical. Your organization should set some boundaries, and use the same set of standard practices across the board. There are organizations who feel it is wrong to ‘steal’ an employee from another organization, but have no qualms hiring a recruiting agency to do so. What’s acceptable and what’s not needs to be decided by the organization beforehand as part of a comprehensive recruitment policy.



There is a thin line that separates aggressive hiring from poaching. Poaching is when you are adamant about hiring an employee at a competitor who has not expressly shown an interest in joining your organization. Encouraging employees to leave their current job and defect to your company may help you get good talent, but it may also prove to be disadvantageous in the long term. The poached employee may gain a poor reputation as someone who may quit his or her current position easily and is vulnerable to poaching. And if you're the one who did the poaching, you risk losing the respect of your competitors.

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