

## **Protecting Company Knowledge And Confidential Information**

The fast paced economy, high employee turnover, and changing notions of company loyalty have dramatically increased the risks of having intellectual property, confidential information, and customers walk out the door with ex-employees. An increasing number of companies are addressing these risks by developing (or enhancing) confidentiality policies, noncompete/confidentiality agreements, and related HR procedures. We have attempted to highlight some of the issues.

### **The Issues**

Former employees can greatly damage a company's business by becoming competitors or by disclosing critical information. Some of the vulnerabilities arising from such actions include:

- Stealing customers.
- Using company knowledge, confidential information, or trade secrets to build a competing business.
- Exploiting company or employee-generated business goodwill (i.e., with current customers or vendors).
- Disclosing confidential information, practices, and plans.

### **Resources**

Employers have a number of tools to protect both company knowledge and their customers from the actions of ex-employees. They include:

- Developing strong confidentiality/nondisclosure policies and procedures and including them in HR Manuals and Employee Handbooks.
- Implementing technology-related policies that address computer, e-mail, voice-mail, and internet security issues and the company's right to protect and monitor its own systems and property.
- Identifying confidential information and establishing procedures designed to protect it, including stamping it as "confidential." Such practices leave little doubt as to what the employer considers confidential.
- Establishing restrictive access procedures that limit the ability to see and use confidential information.
- Sending out periodic reminders to employees regarding confidentiality policies and procedures.

- Locking up information and implementing a “clean desk” policy.
- Establishing effective termination procedures to ensure the return of documents, equipment, etc. and to remind the employee of any confidentiality or noncompete obligations. Some employers require terminating employees to allow the company to forward copies of noncompete/confidentiality agreements to prospective employers.
- Establishing appropriate patent, copyright, and trademark protection.
- Utilizing various employment agreements such as:
  - ✓ Noncompete agreements that seek to prevent ex-employees from going to work for or establishing rival businesses.
  - ✓ Confidentiality/Nondisclosure agreements that restrain employees from disclosing confidential business information.
  - ✓ Non-solicitation agreements that allow ex-employees to work with competitors but do not allow them to solicit customers from a former employer.
  - ✓ Anti-raiding clauses that provide that an ex-employee may not attempt to lure away other employees from the company’s organization.

Companies should employ the tools that meet the specific needs of their businesses. In some instances good confidentiality policies and procedures are enough. In others, employment agreements may be appropriate. In all instances, however, the sensitivity of the issues and the potentially serious consequences involved require that considerable care be taken in designing the appropriate responses. Remember too, that state law varies considerably in this area, so contact your attorney for detailed guidance.

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