



Protecting Business Secrets in a Mobile Workforce

Today it is commonplace for employees to transition through several employers during their professional careers. So how does a business protect its trade secrets and confidential business information from going out the door with departing employees? In general, Ohio law protects trade secrets as long as the employer protects them. The essential questions become "what is a trade secret" followed by "what must an employer do to protect it"?

What is a Trade Secret?

A trade secret is information that derives independent economic value from not being generally known and is subject to a reasonable amount of secrecy. Obvious trade secrets include:

- Customer Lists
- Manufacturing Processes
- Secret Formulas
- Operational Information

How Do You Protect a Trade Secret?

It is not enough that a business has information that would otherwise qualify as a trade secret, and the company must take steps to protect that information. Merely stamping all business information as "confidential" will not do the job.

Non-Competition Agreement

One way to maintain sensitive and confidential information is to make employees aware of the confidential nature of the data they have access to. This can be accomplished through an employee handbook or a contractual agreement. Contractual restrictions can take many forms and are often incorporated in an Employment Agreement or a Non-Competition Agreement. It is increasingly difficult to enforce "overly broad" non-compete provisions

against former employees. Many states now have legislation specifically addressing non-compete agreements, often with restrictions limiting an employer's ability to enforce them. At this time, Ohio does not have any statutory requirements or prohibitions against non-compete contracts. When enforcing a non-compete agreement in Ohio, courts attempt to balance the parties' legitimate interests weighing the employer's interest in protecting its property against the employee's right to use their skills and experience in their chosen profession. In evaluating whether or not an agreement is enforceable, Ohio courts will consider the duration of the restriction and the territory to which it applies and balance those factors against the damage that



the employee might do to the employer's business. Non-Competition Agreements are not necessary to protect legitimate trade secrets, and employers should use them carefully and not as blanket restrictions. A non-compete agreement should be carefully tailored to the specific situation and employee.

Non-Solicitation Agreements

Businesses may also employ Non-Solicitation Agreements to protect their interests, and

essentially these Agreements prohibit employees from soliciting the customers of the employer. These Agreements are often easier to enforce than Non-Competition Agreements. Ohio courts will look into whether the challenged solicitation is unfair competition, such as solicitation in combination with confidential information, breach of fiduciary duty, intent to injure the former employer's business or deception.

Non-Disclosure Agreement

The most useful contractual means of protecting trade secrets may be to have all new employees sign a Confidentiality or Non-Disclosure Agreement when hiring. If adequately prepared, agreements should specify the confidential nature of the information to which employees are given access. It should also determine how that information is to be protected and returned in the event of termination of employment.

Another common sense means for protecting sensitive information is to keep it separate from non-sensitive information. Such steps may include:

- Limiting computer access to certain sensitive information.
- Establishing and enforcing a sign-out procedure documenting the access to certain sensitive information.
- Keeping adequate backup records of sensitive information.
- Destroying or otherwise removing sensitive information from the premises which is no longer of use and not otherwise required to be maintained at the workplace.

Exit Interviews

One final way to protect sensitive information is to conduct an exit interview with all departing employees that emphasizes the employer's expectation that the employee will continue to respect the employer's proprietary business information. This is also an excellent time to remind the employee of their obligations under any Confidentiality or Non-Disclosure Agreement or other agreement that restricts the employee after leaving the company.

If you have any questions about protecting your company's trade secrets or other proprietary information, please consult with one of our business attorneys.