
Employment Law Planning Series

NON-COMPETES AND TRADE SECRET PROTECTION

The Problem

Employee loyalty and commitment are declining, while turnover is increasing. Easy access to company email, disk drives, the internet, scanners, and other data sources makes an employer's confidential information more vulnerable than ever before. In addition, employees who leave employment frequently solicit co-workers and customers to join them, or establish businesses in direct competition with their former employer.

The Solution

We assist clients in protecting their assets and employees from this kind of unfair competition. Our goal is to prevent workplace problems before they occur. By implementing preventative strategies that protect confidential information and customer goodwill, a business can minimize the risk of unfair competition and maximize a business' ability to pursue those who misappropriate its invaluable assets.

In addition to working with clients in developing comprehensive trade secret protection programs, our services include:

- Drafting non-competition agreements, non-disclosure agreements, assignment of invention agreements, and similar documents;
- Preparing executive and individual employment agreements;
- Preparing employee manuals and written policies; and
- Conducting legal audits of trade secret protection issues.

When preventative efforts fail, we aggressively litigate claims, including those for breach of non-competition and confidentiality agreements, theft of trade secrets, breach of fiduciary duty, employee raiding and unfair trade practices.

Trade Secret Protection Programs

An effective Trade Secret Protection Program is the key to preventing unfair competition. A Trade Secret Protection Plan guards against the loss of confidential information, deters employees from unfairly competing, and enhances the ability of the employer to prevail in litigation. Like any workplace law issue, an effective Trade Secret Protection Program depends on the development of a practical policy, the consistent implementation of that policy, and the documentation of compliance with the policy. An effective Trade Secret Protection Program combines contractual protection, physical security, information security, and employee communication.

- New Jersey permits employers extensive contractual protection through agreements covering non-competition, non-disclosure, assignment of inventions, and other restrictive covenants. Such agreements, for example, frequently offer broad protection of proprietary information to prevent unfair competition and prohibit solicitation of other employees.
- Employment agreements and incentive compensation plans also provide opportunities for employers to prevent or discourage unfair competition through the forfeiture of stock options, deferred compensation, or other rewards when employees violate the terms of restrictive covenants.
- Open employer-employee communications is also effective way to avoid workplace disputes. Communicating with employees through employee handbooks and other means regarding the employer's expectations about the protection of its trade secrets and other confidential business information, as well as its policies against the use of such information, and use of information from other companies, reduces the risk of misunderstandings and harm to the employer. In addition, such communications increase the possibility that the employer will be able to protect its information in litigation, and reduce the risk of liability or damages in claims brought by other employers regarding alleged misuse of their information. To facilitate such communications, we work with employers to draft and implement appropriate employee handbooks, policies, training programs and exit interview procedures, all customized to fit the client's needs and culture.

Litigating Violations of Covenants-Not-to-Compete and Unfair Competition Claims

Covenant-not-to-compete and trade secret litigation is not routine. Courts often conduct injunction hearings only days – and sometimes hours – after a lawsuit has been filed. In these cases, the injunction hearing often is the only “trial,” given the unusual nature of this litigation. Attorneys who are able to investigate, prepare for the injunction hearing, brief legal issues, and present evidence under such unique circumstances often give their clients a considerable advantage at the injunction hearing, and employers who lose at the initial injunction stage rarely get a second chance to present evidence regarding the enforceability or unenforceability of the agreement at issue. We routinely represent employers in injunction proceedings regarding an employee’s breaches of non-competition agreements and thefts of trade secrets.



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