

## TIPS TO PROTECT YOUR COMPANY'S TRADE SECRETS

Suppose one of your top employees unexpectedly resigns and informs you that they are taking a job with one of your biggest competitors. What questions immediately come to mind: “can the employee solicit our customers?”; “what about our trade secrets?”; “does she/he have a duty to keep them confidential?”

The time to start thinking about these questions is not when you're losing an employee, but rather, when you first hire any new employee. The protection of trade secrets starts at the beginning of any new employment relationship and is a continual process. While Colorado law provides protection to employers under the Uniform Trade Secrets Act, C.R.S. § 7-74-101, *et seq.*, there are several protective measures that an employer should undertake to help ensure its trade secrets are secure.

**Tip 1.** The obvious question, which is often difficult for many companies to answer, is “what information do we consider a trade secret or confidential?” It is not enough to simply assert that your company has confidential information. If you can't adequately identify what information you deem confidential, you can't take the necessary steps to protect it.

**Tip 2.** Consider having employees execute a non-compete agreement. A non-compete agreement is specifically targeted at the above scenario – losing an employee to a competitor. Under a non-compete agreement, an employee can be restricted from working or being affiliated with a competing company in a specific geographic area for some period of time. Although non-compete agreements are generally disfavored in Colorado, a non-compete agreement may be utilized for the protection of trade secrets. Any non-compete agreement should be carefully drafted in accordance with Colorado law. In particular, special consideration should be given to ensure the geographic scope and duration of the non-compete are reasonable.

**Tip 3.** Whether or not the employee has executed a non-compete agreement, all employees (as well as independent contractors and temporary employees) should sign a confidentiality agreement as a condition of employment. A confidentiality agreement should contain, among other things, a definition of the company's trade secrets. Be careful to ensure that the definition is targeted only to information that is truly confidential. The definition should not be overly broad or generic.

**Tip 4.** Include a confidentiality provision in personnel manuals. Personnel manuals should also include digital policies (e.g. computers are company property; employees

have no right or expectation of privacy on any electronic device that they use for business).

**Tip 5.** Conduct regular meetings with employees to communicate what information the company considers confidential and why it should be protected.

**Tip 6.** Limit access to confidential information to only those persons who absolutely need it. An employee should only have access to the confidential information necessary to perform their job.

**Tip 7.** Confidential information in paper form should be maintained in a separate locked file cabinet or locked office. Keep track of who has access to keys.

**Tip 8.** All confidential electronic information should be password protected. Keep track of who has access to passwords.

**Tip 9.** Conduct exit interviews. An exit interview is a company's last opportunity to impress upon an employee to keep information confidential in their new employment. Whenever possible, prepare a list of discussion points for the exit interview which the departing employee should sign acknowledging that they understand the company's position on its trade secrets. Ensure the employee returns all confidential information that had been in their possession, including any information that is on any personal electronic device that the employee used to conduct business.

**Tip 10.** As important as establishing sound policies for the protection of your company's trade secrets is monitoring, enforcing and updating those policies. As a rule of thumb, policies should be revisited annually.

This area of law is continuously evolving. Whether you are seeking to implement new trade secret policies for your company or enforce existing ones, we will be happy to discuss any questions you have.

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