

# INTERNAL PROCEDURES FOR PRESERVING YOUR BUSINESS ASSETS THROUGHOUT EMPLOYER-EMPLOYEE RELATIONSHIPS

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In the first installment of Mr. Scott's article (*ECJ Employment Law Reporter* - January 1993), the use and content of employment agreements were addressed. This final installment continues with a discussion of the practical steps an employer may wish to take in an effort to preserve its trade secrets and confidential information.

## **Additional Precautions**

It is essential that the employer whose business depends upon confidential information or trade secrets take precautions to preserve the confidentiality of these valuable assets. An employer should remember that a vast array of information can be considered confidential and warrant protection. Thus, you should reconsider all of your assets in light of their potential competitive value. For example, pricing information, the names of suppliers, and the salaries and benefits of key employees may warrant protection along with more common trade secrets such as formulas, ingredients lists and designs. Once you determine the aspects of your business which should be protected, the following steps may be taken to minimize the danger presented by unscrupulous employees and competitors.

1. **Limit access to trade secrets and confidential information.** Access should be given to persons on a need-to-know basis only. Documents should be kept in a locked filing cabinet or other secure place. Access to computer data bases should be restricted through use of an appropriate security software Program.
2. **Emphasize the importance of your trade secrets and the need to maintain their confidentiality.** Employees should be made aware of the company's practices regarding the maintenance of the confidentiality of its trade secrets and confidential information. Periodically remind employees of the procedures to be used concerning the dissemination of this information. In addition, as the nature of the confidential information and trade secrets change, the employees should be made aware of these

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changes to combat the employee's ignorance or inadvertent disclosure.

3. **Maintain access logs.** A log or record should be kept of those persons in the company who have access to its confidential information or trade secrets. Rules regarding check-in and check-out procedures should be established and enforced.
4. **Limit access to the company's copy machine.** For obvious reasons, a copy machine is a thief's best friend. Key codes and other devices which limit a person's ability to use the machine are good ways to limit unauthorized copying. At a minimum, consider moving the machine to common areas to deter potential piracy.
5. **Conceal confidential components.** Key ingredients or supplies which are essential to your business should be kept under lock and key. Assuming these ingredients do not represent a danger to human health, you may want to keep these items in containers which are marked by code names only. This process should begin with the supplier prior to delivery.
6. **Use contractual safeguards with third parties.** Contractual safeguards should be employed in protecting trade secrets and confidential information which are disclosed to third parties such as your company's suppliers and customers.
7. **Perform a security check.** In addition to security guards and burglar alarms, the company should limit the access of visitors. Visitors should be escorted and wear tags identifying them as visitors. Further, visitors should not be given access to trade secrets or confidential information without appropriate safeguards.
8. **Clearly identify all protected documents as "confidential."** Files, drawings and other items which are integral parts of your confidential information or trade secrets should be labeled plainly.
9. **Identify likely candidates for piracy.** The vast majority of incidents constituting unfair competition begin with disgruntled employees seeking to better their position. Ensuring that key employees have appropriate benefits and wages may eliminate their motivation to contact a competitor or create a competitive business.
10. **Conduct exit interviews.** Upon termination of an employee, it is useful to hold an exit interview. The exit interview serves two purposes: First, it will serve to underscore to the employee the obligations he or she agreed to as a condition to employment including each covenant in the employment agreement; second, you are given a pre-litigation opportunity to investigate any activities the employee may have undertaken which might have breached the employment agreement or otherwise be considered unfair competition. The employment agreement itself can serve as a guide to the questions to be posed by the interviewer. Example questions include: "Did you return all of your notebooks, calendars and telephone directories?", "Have you been contacted by any competitor?" and "What are your plans for future employment?"

Although the above procedures cannot absolutely prevent the theft of valuable information, a program for preserving the confidentiality of your assets may greatly reduce the risk of these assets being stolen. Further, should unlawful competition begin, the above steps can provide the tools necessary to assist your legal counsel in stopping it before any serious damage is inflicted upon your business.

*If you have questions regarding how you can preserve your business assets, please contact Kelly Scott or the member of the Firm who normally handles your legal matters.*