What Does Your Company Do To Protect Its Trade Secrets? – A Simple Checklist to Protect Confidential Information

What Does Your Company Do To Protect Its Trade Secrets?
by Mark M. Whitney

What can an employer do when an employee leaves to work for a competitor and takes the employer's secret recipe for its special sauce with him? For many businesses, especially in this high-tech economy, confidential information and trade secrets are their principal assets.

Many employers utilize non-compete agreements containing provisions designed to protect a company's "confidential information." However, even if the company has an agreement to rely upon, protection of corporate information is not automatic. One important factor that courts consider when determining whether business information should be protected as "confidential" is the extent to which the company took concrete steps to protect the information.

Does your company take adequate steps to protect its trade secrets and other confidential business information? Here is a simple checklist of things your company can do to protect its confidential information:

1. The company should first identify the information it considers to be valuable. This is an important first step for most companies.

2. Ascertain whether the information is truly confidential or secret. Courts generally will not protect information that is readily available to competitors or generally known in the industry. If it is posted on your web site, it is not confidential!

3. Make a list of the steps the company currently takes to protect its confidential business information. Comparing this list to the other protective options described below may be a quick way for a company to identify deficiencies in its current information protection program.

4. Require your employees to execute non-compete and non-disclosure agreements. It is important that non-compete and non-disclosure agreements not be over-used. Try to target more specifically the employees that truly need to sign such agreements.

5. Ask outside contractors, customers or other third parties to sign non-compete and non-disclosure agreements. These people are often overlooked by companies when fashioning policies and agreements concerning confidential information.

6. Have a written policy that describes the various ways in which confidential information is protected. This should be included with your company's other policies, typically in your employee

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manual.

7. Be sure that your confidential information/trade secret policy defines what the company considers to be confidential. Again, it is important not to classify too many categories of information as confidential. Concentrate on listing the information that the company has invested in to obtain, information that gives it a competitive edge over its competition. Be as specific as possible with respect to the most important information.

8. Put in place regular procedures to notify employees of the company's confidential information and trade secret policy. It is important that you let your employees know that a policy exists! This is frequently done at new employee orientation, at regular intervals throughout the year and upon an employee's departure from the company.

9. Implement a records/information retention policy. If your company already has one, consider whether it has been modified to reflect the changes in the way information is stored and that it covers information that is stored electronically. Be sure to *follow* the record/information retention policy consistently.

10. Adopt security measures to protect your company's confidential information and trade secrets. There are numerous types of security measures that can be adopted to protect information. Examples of common security measures are: using check-in and check-out procedures to keep track of who enters the premises; requiring employees to wear identification badges; limiting visitor access; locked file cabinets; using entry cards to limit access to portions of the premises; protection of computer network access with passwords, encryption and "firewalls;" marking documents as "confidential;" limiting access to confidential information only to those employees who need to know it; video surveillance; etc.

There are numerous measures that a company can employ to preserve its confidential information and trade secrets, and this list is by no means complete. However, it is always useful for a company to reexamine the steps it takes to protect its valuable confidential information.

Morgan, Brown & Joy, LLP is a boutique law firm that focuses on representing employers in employment and labor law matters. If you have any questions about this article, please contact Mark M. Whitney at 617-523-6666 or by email at mwhitney@morganbrown.com.

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