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When Your Employee Knows Too Much – How To Protect Your Customer Relationships and Other Valuable Information

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Like everything else, employment relationships change. Sometimes people change careers or industries. Most people you usually wish well in their new endeavors; you move on yourself.

But some people move to the competition who, during their employment by you, have learned more about your business than you would like to have revealed to a competitor – for example: current bids, margins, financial data, customer information – anything that could give a competitor an unfair advantage over you. You clearly cannot purge your former employee's memory. Is there anything you can do to protect information that you have expended so much time, energy and money to develop?

The answer is yes, but you will have to implement and enforce some rules in the workplace to make it work.

A. With a Written Agreement

You may protect confidential information with a non-disclosure agreement, which can be coupled with a "covenant not to compete." These two items are often used in tandem because the disclosure of confidential information is often accompanied by a change of jobs. If the nature of the information sought to be protected is *truly* secret – *i.e.*, that you can articulate a sound basis for wanting to keep the information out of your competitors' knowledge, it may be useful to be able to bar the disclosing party from working for a competitor. Where a court may not agree that trade secrets are involved, an enforceable restrictive covenant may bar the employee – and therefore the new employer – from disclosing information for a period of time sufficient to make its use ineffective.

B. With or Without a Written Agreement

The Illinois Trade Secrets Act protects many types of information that you might not suspect qualify as a "trade secret." A trade secret is information that your company:

1. Takes reasonable steps to keep secret; and
2. Derives economic benefit from having the secret kept.

Trade secrets could include, among other things, lists of actual or potential customers or suppliers, technical data, financial data, compilations of data, pending bids, and information about customers that is not available from public sources (*e.g.*, phone books, D&B, etc.). Information is more protectable: (i) the more difficult it is to recreate the information from "appropriate" sources; and (ii) the more secret you keep it.

So how do you keep your confidential information from walking out the door? Generally speaking, the more valuable the information, the more it is necessary to reasonably keep it secure. For example, if the information sought to be protected is proprietary customer or financial information and your company is small, limiting access to that information by using computer passwords and keeping the only printout in a locked desk drawer may be all that is necessary for legal protection (you should also own a paper shredder). On the other hand, if

you have the secret formula for a world-famous soft drink, security would have to be greater for your steps to be deemed reasonable. The best guide is common sense, but an attorney knowledgeable in this area can help. Remember, though, that this is a two-edged sword. Anytime you hire a person in a sensitive position who is coming from a competitor, you should: (a) know whether that person has signed a covenant; and (b) consider whether his/her present or former employer may be looking for a reason to sue you and/or the employee.

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