



TRADE SECRET PROTECTION: A STEP-BY-STEP GUIDE

1. PROTECTABLE SUBJECT MATTER

A trade secret protects any information, data, or know-how that is not publicly available, is maintained as a secret, and has economic value from being a secret (e.g., customer/vendor data and lists; pricing/discount information). To maintain a trade secret, reasonable effort, such as those outlined below, must be taken to prevent its public disclosure.

2. PROTECTING TRADE SECRETS – SECURITY MEASURES

- Mark confidential materials as proprietary
- Guard, segregate and limit access to sensitive information physically or electronically
- Log all access to confidential information
- Place strict limits/rules prohibiting the removal of information from premises
- Restrict access to locations where sensitive information may be accessed; prohibit recording devices in such areas
- Ensure confidentiality and non-disclosure agreements are in place with third parties
- Develop procedures for use of organization technology offsite
- Password protect electronically stored information
- Set up appropriate firewalls, anti-virus and anti-malware mechanisms, encryption and other anti-hacker initiatives
- Prohibit visitors from disclosing information viewed/accessed in locations housing sensitive information

3. PROTECTING TRADE SECRETS – EMPLOYEE MANAGEMENT

Training & Confidentiality Policy

- Develop and distribute confidentiality policies to remind staff of their duty to preserve trade secrets
- Obtain written acknowledgements from employees confirming receipt and understanding of confidentiality policies and training
- Teach employees about the importance of confidentiality. Define what information must be kept confidential

Employee Agreements

- Relevant employees should sign agreements with non-disclosure, confidentiality, proprietary rights and non-compete provisions

Employee Departure Protocol

- Provide copies of all employee agreements
- Remind staff of confidentiality obligations
- Arrange exit interview to determine if new employer is competitor
- Shut off both physical/electronic access to organization (i.e., change passwords; return of access mechanisms, such as keys)
- Review of communication records (computer, hard drive, email etc.) to assess risk of trade secret theft
- Departing employee must surrender all organization material

4. OTHER SAFEGUARDS

Public disclosure review mechanisms – Ensure that confidential information does not appear in marketing or other publicly disclosed materials (e.g., white papers or web sites)

Inadvertent disclosures – Develop a plan for prompt response to inadvertent disclosure of confidential information including mechanisms to limit the spread of disclosed information and to seek the return of materials from those to whom inadvertent disclosure was made

Audits – Conduct regular trade secret audits to confirm and document continued compliance. >

DISCLAIMER: This paper provides background information of potential interest to facilitate and inform a reader's specific inquiry to be made with legal advisers of their choosing. It does not constitute legal advice. This paper is neither a guide nor an explanation of all relevant issues under consideration. Moreover, the law is ever evolving; observations made today may be inapplicable tomorrow. Fishman Stewart PLLC assumes no responsibility for any use of, or reliance on, this paper.