



## PROTECTING A COMPANY'S TRADE SECRETS

A company's trade secrets are valuable assets. Under California law, a "trade secret" is information that is not generally known to the public or to other persons who can obtain economic value from its disclosure or use, and which is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Thus, unless a company takes affirmative steps to maintain the secrecy of its information by adopting a trade secrets protection program, such information will not constitute a trade secret subject to legal protection. This Newsletter shall discuss some of the ways a company can protect its trade secrets.

**Confidentiality Agreements.** As a matter of course, a company will disclose trade secret information to its employees and others with whom it does business. For this reason, it is important to have each employee sign a confidentiality agreement in which the employee agrees not to disclose any trade secrets. Similarly, before a company discloses confidential information to a supplier, consultant, customer, or prospective purchaser, it should have a confidentiality agreement signed, or provide a confidentiality provision in the supply contract or other agreement.

**Employee Instruction Program.** A company should take affirmative steps to avoid inadvertent disclosure of trade secrets by its employees. The company should institute an employee awareness program on the identification and protection of trade secrets. This program should include periodic reminders by company newsletters, memoranda, or seminars, of the importance of the company's trade secrets and how to protect them. The company's handbook should also emphasize the importance of protecting trade secrets and the employee's responsibility for protecting these trade secrets. Each departing employee should be reminded of his or her continuing legal obligation to protect the company's trade secrets in an exit interview.

**Restricting Employee Access.** A company should take reasonable steps to prevent employees from having access to trade secrets. For example, the company can restrict physical access to places where trade secrets are kept by (a) issuing employee ID badges to restrict access to certain areas; (b) keeping trade secrets in a locked room or in locked file cabinets; and (c) requiring employees to sign in and out in a logbook.

**Restricting Visitor's Access.** A company should take reasonable steps to avoid disclosure of trade secrets to visitors. Such steps can include (a) requiring visitors to sign a logbook giving their name, company affiliation, purpose of visit, and time of arrival and departure; (b) requiring visitors to wear a prominent identification badge; (c) having visitors escorted by a company employee at all times; and (d) restricting access to any area in which confidential information may be kept. If a visitor will be shown trade secrets, the visitors should sign a confidentiality agreement.

**Proprietary Legends.** In order to prevent the unintentional disclosure of trade secrets, a company should place a prominent legend on each confidential document indicating that the document contains proprietary information. Documents can also be placed in color-coded files to indicate their confidential nature.

**Protection of Computer Data.** At this time, many trade secrets can be accessed through the company's computers. A company can protect the trade secrets on its computers from being accessed by unauthorized persons by (a) using passwords to prevent access to computer files; (b) encrypting information; (c) limiting access to blank computer disks; and (d) carefully disposing of computers which contain trade secret information.

**Photocopying Restrictions.** A company should restrict photocopying of trade secret information. This may be accomplished by placing all photocopying equipment in an area apart from the area in which confidential information is kept to make copying more difficult, by modifying the photocopying equipment to require a personal code, and by tracking all photocopy use.

**Review of Documents.** A company should review advertisements, new product brochures, company or employee presentations or reports, marketing information, and all other information planned for public release, to ensure that trade secret information is not unintentionally disclosed to the public.

**Waste Disposal.** Since courts have held that person does not have a reasonable expectation of privacy in trash left for collection in a public place, a company should take reasonable steps to maintain the secrecy of information left in trash containers by shredding any trade secret information before its disposal. The extent of the measures required to prevent the disclosure of confidential information usually varies with the value of the information. The company has the burden of proof to show that reasonable measures were taken to protect the information such that a third person would have difficulty acquiring the information without improper means. By implementing a trade secret protection program, a company will be able to protect its valuable proprietary information.

*This complimentary newsletter is intended to provide general information. Because of the complexities and constant changes in the law, it is important to seek professional advice before acting on any of the matters covered herein.*