

Trade Secrets

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We live in a fluid society in which an employee may change employment as often as once in five years. Naturally, an employee leaving one firm to join another may have knowledge of some facts about his previous employer's business which might be considered a trade secret.

There are moral as well as legal reasons why a trade secret should be protected when a job change exposes an employee to a competitive situation. Many of us have worked in the past for competitors to our current employer and are exposed to the temptation of revealing confidences.

The Ohio code defines a "trade secret" as follows:

"Trade secret" means the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, or improvement, or any business plans, financial information, or listing of names, addresses, or telephone numbers, which has not been published or disseminated, or otherwise become a matter of general public knowledge. Such scientific or technical information, design, process, procedure, formula, or improvement or any business plans, financial information, or listing of names, addresses or telephone numbers is presumed to be secret when the owner thereof takes measures designed to prevent it, in the ordinary course of business, from being available to persons other than those selected by the owner to have access thereto for limited purposes.

Note that the test for secrecy is contained in the final segment which requires the owner of a trade secret to take "measures designed to prevent it . . . from being available to persons other than those selected to have access thereto.

Employment contracts usually contain a restriction on an employee not to reveal a trade secret after employment terminates until such time as the trade secret is made public by means of publication, patent, etc. As a consultant, I have signed many contracts with my clients which contain the same restrictive clause.

If you are a manager and recognize a company trade secret, it would be wise to follow the requirement of the Ohio code by taking appropriate measures to let only those employees who need to know, in on the secret. Further, inform those employees what you and your company consider to be trade secrets. This should be reiterated at a terminating employee's exit interview.

As an ex-employee, try to identify the sensitive areas of trade secrecy in your past and partition these from your current employment. If you do find evidence of public disclosure of the secret, keep a record of that in your personal file. If a dispute occurs concerning trade secrecy, you can help your council by supplying him with all legitimately obtained supporting documentation.

It would seem that small amount of forethought would prevent a significant number of "trade secret" cases from coming to litigation, which would, in turn, help to reduce the load on our overcrowded court system.

- Robert B. Gregory

See also:

- An expert witness
- Being an expert witness

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