



Protect Your Confidential Business Information

What are the duties of current and past employees when dealing with their employer's confidential information?

This bulletin provides some practical tips on how you as an employer can minimise the unauthorised use and disclosure of your confidential information.

In today's information age, information has become a valuable commodity for a business in many forms - ranging from simple client lists to highly technical trade secrets.

An important concern for employers is the use or disclosure of confidential business information by current and past employees for their own benefit or for the benefit of competitors.

During employment, the employer generally owns all information produced or obtained by employees. Whilst this is the position generally, it does depend on the precise facts and circumstances of each case. For example, if the information was obtained or produced by an employee in circumstances where it did not relate to the duties of the employee, there could be an argument that the employee in fact owns the information. A good practice for employers is to ensure contracts of employment are clear about the ownership of confidential information in a broad range of circumstances.

In addition to the employer's ownership of the information a much wider duty of fidelity applies to an employee during employment which means that the use or disclosure of any information (whether confidential information or not) must be for the benefit of the employer only. This duty of fidelity is higher for employees who are in more senior positions.

Without the appropriate clauses inserted into your employment contracts, the obligations of the past employee are limited to confidential information that can be classified as the employer's trade secrets.

A trade secret is one form of confidential information which, if disclosed to a competitor, would cause real or significant harm to the owner of the secret or which requires a considerable amount of work, effort and skill to create in the form in which it is claimed to be confidential.

An important distinction between the obligations owed to an employer by current employees and past employees is that the past employees are free to use their general skill, knowledge and experience acquired during employment regardless of the impact on their former employer.

As an employer, consider how you can implement the following practical tips to keep your confidential information sufficiently secret and to avoid its unauthorised use or disclosure by a current or past employee:

- Guard Your Information

Limit the sharing of the information only to employees who absolutely need to be privy to the information.

- **Secure Your Information**
Introduce appropriate security measures to keep the information safe.
- **Describe the Information as Confidential**
Inform your employees that the particular information is considered confidential and that its use or disclosure without your prior consent (preferably written consent) is not acceptable under any circumstances.
- **Enhance Your Employment Contracts**
Amend your contracts of employment to ensure they properly contain confidentiality clauses. It is important to clearly identify the information that you seek to protect as confidential because courts are reluctant to grant relief where information is described in general terms.

For more information on how to become involved in shaping your terms and conditions of employment then please do not hesitate to contact us.

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