

4 Tips to Protect Trade Secrets and Confidential Information When Terminating Employees

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Employers may face risks of departing employees, particularly involuntarily terminated employees, taking the employer's confidential information or trade secrets with them when they leave. Putting aside the employee's motivation—a desire to compete, spite, or something else entirely—employers should consider protective measures to limit, if not completely cut off, an employee's access to confidential information and trade secrets attendant to termination of employment.

Here are four best practices to limiting an employee's access to confidential information and trade secrets proximate to termination of employment:

- 1. Cut off the employee's access to Company computer systems during, but not before, the termination meeting.** Use the element of surprise to the Company's defensive advantage. An employee who notices that access to Company computer systems has been cut off may sense the impending termination and take efforts to obtain, conceal, access, or destroy Company confidential information in paper form or on electronic media.
- 2. Remind the employee of all post-employment confidentiality obligations and restrictive covenants during the termination meeting.** The termination meeting may be the last point of direct communication between a departing employee and the employer. Whether or not the employee heeds the warnings given, the Company is in a better position to enforce its rights having given the departing employee notice of the employee's obligations, and a paper copy of any applicable agreements.
- 3. Gather all Company devices from the departing employee as soon as possible.** The longer the departing employee has access to Company devices, the more likely the devices (and any confidential or proprietary data thereon) will become lost or compromised. The employee should be given a deadline by which devices at the employee's home or elsewhere outside the workplace should be returned to the Company.
- 4. Consider financial incentives for departing employee compliance.** Employers may condition severance pay, if offered to the departing employee, upon the return of all Company confidential information and devices. Likewise, in some but not all states, employers may implement policies that condition payout of accrued and unused vacation upon prompt surrender of Company devices.

and compliance with post-employment confidentiality obligations.

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