

Get It In Writing: Document Employee Obligations to Avoid Your Own Meta/Twitter Fight

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Threads, Meta's new Twitter alternative, has jumped into the social media fray. Meta claimed seventy million Threads users its first day after launch. Not standing idly by, Twitter struck back – via its lawyers. In a cease-and-desist letter sent that same day, Twitter accuses Meta of *"systematic, willful, and unlawful misappropriation of trade secrets."* Specifically, Twitter claims that Meta has hired scores of ex-Twitter personnel who *"had and continue to have access to Twitter's trade secrets and other highly confidential information."*

Both Twitter and Meta are based in California, which has a strong statutory and public policy tradition of not restraining employment, instead allowing individuals to freely move from one employer to another. Reflecting that, Twitter focuses on what California law does allow – restricting use of a prior employer's confidential, trade secret information for the benefit of a new employer. Twitter's allegations are specific and serious – that *"Meta deliberately assigned these employees to develop, in a matter of months, Meta's copycat 'Threads' app with the specific intent that they use Twitter's trade secrets and other intellectual property in order to accelerate the development of Meta's competing app."*

Twitter alleges a concerted, organized effort by Meta to misappropriate Twitter's trade secrets and intellectual property via its former employees, to directly compete with Twitter. The letter references ex-employees' "access" to such Twitter information, without specifying the form of that access – whether documents taken by those employees, or knowledge those employees gained at Twitter. Either way, Twitter accuses Meta of misappropriating Twitter's valuable information by purposefully employing former Twitter employees.

The facts will become apparent as this "Clash of the Titans" plays out in the social media marketplace, and possibly in the courts. But what can your company do to avoid finding itself in Twitter's or Meta's position? How can your company protect against misuse of its trade secrets and intellectual property by ex-employees, and avoid its current employees being accused of such misuse?

One document can help with both of these issues – an employee Proprietary Information and Inventions Agreement, or PIIA, which has two core functions: 1) to protect valuable trade secrets and intellectual property provided to, accessed by, or created by your employees, and 2) to ensure that

use of these by your employees isn't subject to a claim of misappropriation from a prior employer.

By signing a PIIA prior to or immediately upon joining your company, each of your employees commits to protecting any confidential trade secret information or intellectual property that they receive or access pursuant to their employment. Your employees agree to use or disclose that information *only* for the benefit of the company – not for their own benefit, or for that of any other company. Your employees also agree to return or destroy all such information that constitutes or is related to trade secrets or other intellectual property when their employment ends.

Additionally, a PIIA secures your company's rights to all intellectual property (typically patentable inventions and copyrighted works/software) that your employees develop pursuant to their employment. Under the PIIA, an employee irrevocably grants full ownership to the company to this intellectual property. The scope of what employees grant to your company isn't without limit. In California, it generally covers intellectual property developed by employees on company time, using company resources, or relating to the company's business.

Besides securing ownership of what employees develop for you, a PIIA also protects you from ending up in Meta's shoes – being accused of knowingly having your employees misappropriate their prior employers' trade secrets. An employee states in a PIIA that their work for your company won't violate any agreement with their prior employer, and that they aren't "holding back" any relevant intellectual property of their own from what they grant to your company. If either of those is not true, then the employee must state in writing what obligations they have to their prior employer, as well as list what they claim is either owned by them or that prior employer. This lets you carefully determine how your new employee can safely work for your company. Also, if your employee doesn't disclose such prior employer's claims on their PIIA, then you have strong evidence that you have taken steps to prevent misuse of that employer's information and didn't know of any alleged misappropriation by your employee.

Of course, a PIIA is only useful if properly completed and reviewed. Make sure that your employees complete and sign PIIAs before beginning in their roles, and that they understand what they are signing. Explain the purpose of the PIIA with clear accompanying materials, or even better, a real person. Also, don't depend solely on the document. If an employee discloses a problematic prior employer or other potential issues, follow up immediately for more details. Document and control the confidential information you provide your employees, and keep track of the inventions your employees develop using an internal invention disclosure system. Also, keep records of technology development using company resources or on company time.

There are plenty of other considerations that can arise within the misappropriation context. For example, what if your company and/or employees are based outside of California? What if instead of employees, you hire contractors who continue to work for other companies, including competitors of yours? What if your company (like Meta) is working to develop something similar to what a new employee worked on with a prior employer? What else can you legally do to protect yourself from former employees using your trade secrets for your competition? A business lawyer can help you determine what needs to be in your standard PIIA and how to address issues that may arise from them, so that you don't receive, or need to send, your own cease and desist letter.

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