

What To Do When You Hire A Thief

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Employers victimized by trade secret misappropriation appropriately express righteous outrage, both at the offending ex-employee and sometimes at the new employer. However, on another day the roles can reverse: That same employer may unwittingly — or worse, intentionally — have hired someone who has stolen trade secrets or confidential information. Failure to take appropriate precautions or implement sufficient remedial measures can expose the hiring employer to a variety of civil, and even potentially criminal, claims. Burying your head in the sand is not a winning strategy, especially given how easy technology has made it to copy and take confidential information.

The following tips can eliminate or minimize this risk and/or mitigate the consequences of having hired an individual who has misappropriated trade secrets. Prospective prevention steps include:

- asking all potential hires if they are subject to a non-compete or restrictive covenant that could impact their duties in the proposed position, and potentially restructuring their job duties or whom they interact with, depending upon the circumstances;
- reminding new hires, preferably in writing, that they are not to take, disclose, or use another company's confidential and proprietary information — this should occur *before* they leave their current employer and *before* they start with you; and
- educating employees, and especially hiring managers, on the company's policy to respect the trade secrets rights of others.

What if despite these preventative measures, you discover that a new hire, who is now on your payroll, has taken the confidential information of a prior employer? The following steps can help mitigate the consequences to your company in such a circumstance.

- Act *immediately* to preclude the use or disclosure of the information, including the quarantining of such information. Work with your information technology department or outside consultants to ensure that the steps you take are thorough and effective.
- Investigate and assess what happened, the sensitivity of the information taken, and the culpability of the employee and others, especially when the matter involves a high-level employee, and consider retaining an attorney to conduct the investigation, to foster

independence and obtain the benefits of attorney-client privilege.

- Discipline or terminate the offending employee, depending on the circumstances.
- Generally cooperate with the previous employer when confronted. Such cooperation could include anything from information sharing to a computer forensic review and agreed-upon deletion; this cooperation must be carefully managed to protect your trade secrets and bring closure to the situation.

All of this can be tremendously complex, nuanced, and important. Therefore, carefully consider each action and involve a multidisciplinary team, including Management, Human Resources, Information Technology and, Legal.

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