

Avoid These 6 Mistakes in Safeguarding Proprietary Information

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As an attorney who litigates trade secrets and noncompete cases, I see firsthand the many mistakes companies make when trying (or forgetting) to protect their proprietary information. Litigation can be a very expensive lesson, even when the result is favorable. So it's much cheaper and safer to avoid making mistakes in the first place.

Here are some of the most common errors that I have seen lead to unwanted disclosure or use of proprietary information. Avoid these mistakes and you're on your way to minimizing the risks:

1. Neglecting protection efforts. Too many companies do not put real effort into protecting their proprietary information. Entrepreneurs and business owners are often stretched thin. It's always easy to focus on revenue-producing endeavors or putting out fires rather than on protection efforts that might not yield immediate results.

But ignoring the risk of unwanted disclosure is just like ignoring your health. Eventually, it will catch up with you. Just like you should go for an annual physical, periodically evaluate protection efforts at your firm. Spending a small amount of money to have agreements drafted can protect you from the risk of unwanted disclosures. Start by consulting a qualified attorney with proven experience in this area who can offer recommendations.

2. Lacking contractual protections. Contracts are the best tools for protecting proprietary information. At a minimum, every person with access to this information should sign a nondisclosure agreement. When used appropriately, nonsolicit and noncompete agreements provide even more protection.

Unfortunately, companies frequently do not require these agreements, often because of an aversion to spending money on legal fees. Many of these organizations later find out that the fees associated with preparing the agreements pales in comparison to the costs of lost proprietary information or litigation to remedy the damage.

3. Ignoring small, but important details. I am amazed by how frequently companies spend the time and money to create noncompete, nonsolicit or nondisclosure agreements only to forget to have employees sign or date the agreements. Other times, companies misfile (or lose) the signed agreements.

Unsigned agreements are often unenforceable and undated agreements can cause enforcement problems. Missing agreements are just about worthless. To avoid this, implement a consistent employee-intake procedure and have designated staff members responsible for ensuring that all required paperwork and contracts are signed, dated and filed appropriately.

4. Forgetting about vendors and consultants. Employees are not the only ones with access to proprietary information. Third parties, such as vendors and consultants, frequently need access to this information. All these third parties should also sign nondisclosure agreements.

5. Comingling proprietary and routine information. Your company's proprietary information is special. In many ways this is what makes your company unique and successful. To the extent possible, keep documents with this information separate and labeled as confidential. That way it's easier to restrict access to them and reduce the risk of disclosure. Better yet, implement a confidential-documents policy that dictates precisely how such documents must be labeled, shared and stored.

6. Overestimating employee loyalty. Certainly, trust is critical to healthy employer-employee relationships, but caution is also warranted. If you require all employees to sign nondisclosure or noncompete agreements, don't make an exception for someone you consider a friend or who you could ever see using proprietary information against you. This may sound cynical, but I've seen many companies burned by key employees who management never imagined would harm the company.

Protecting proprietary information does not have to be complicated or expensive.



Simple measures, implemented in a deliberate, consistent fashion, can significantly reduce the risk of disclosure. If you have questions, consult with a qualified attorney.