



10 best Practices for Trade Secrets Protection

Best Practices for Trade Secret Protection in 2021

1

Develop a company culture that embraces trade secret protection at all levels of the organization, and across all company departments. Trade secret protection must be recognized as a compliance issue, with potentially serious reputational, financial, and legal implications.

2

Know the law for the applicable jurisdictions. The law across jurisdictions, while similar, is not uniform in terms of defining what constitutes a trade secret and the steps necessary to protect that information. Accordingly, it is important to have a good understanding of the legal constructs surrounding trade secret protection in the jurisdictions where the trade secrets may be maintained and disclosed

3

Have a clear understanding of the types of information that your company considers to be trade secrets. In other words, for each level or department within the company, make a list of the information that the company considers to be a trade secret. Once that list or inventory is created, the company can make an informed determination as to which of those warrant protection and the associated expense.

4

Develop a plan for how to respond in the event of a breach. Again, these plans must be jurisdiction specific, and thus, a proper understanding of the law in those jurisdictions is vital to any response plan.

5

Memorialize and operationalize company trade secret policies and procedures. All business units should be educated on the plans and be prepared to follow them on an urgent basis

6

Conduct and refresh confidential information trainings to ensure that your employees are adequately notified of your categories of confidential information. Take particular care to address personal devices, personal email accounts, and other file share programs/folders.

7

Limit access to confidential information on a need-to-know basis. Courts in some jurisdictions have held that allowing access to trade secrets beyond those employees with a need to know the information fails to satisfy the requirement that reasonable measures be taken to maintain the trade secrets as secret. As a result, the applicable information irrevocably loses its tradeseecret status.

8

Have tailored protection plans in place for incoming employees, exiting employees, vendors, and suppliers. For example, ensure that new employee onboarding and exiting employee procedures address trade secrets and confidential information. This is critical since disclosure can trigger loss or liability for the employer, even if inadvertent or accidental. Further, handle vendors and suppliers with special focus. Ensure consistency in the scope of information shared and insert checkpoints to prevent inadvertent disclosure.

9

Standardize contractual terms regarding trade secrets to set a minimum, sufficient floor of protection, with added protections when the circumstances require.

10

Consider alternative ways to monetize or value trade secrets. Valuation is critical for business transactions and potential licenses.