

Ninth Circuit Court of Appeals Underscores Need for Better Work Place Information Policies

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News coverage about the recent decision in *U.S. v. Nosal* heralds the decision as preventing the government from going after employees who use company computers to check their Facebook status or the latest sports scores. But employers need to know that this decision puts the onus on businesses to strengthen protections for confidential information.

The Computer Fraud & Abuse Act (CFAA) is a 1984 anti-hacking law that prohibits someone from accessing a computer either “without authorization” or by “exceeding authorized access.” In *Nosal*, the government was using this law to prosecute *Nosal’s* theft of information from his ex-employer by using his old co-workers who were still employed to access the sensitive information. In its decision, the court found in favor of *Nosal* because *Nosal’s* old co-workers still had permission to access the information, and thus there was no unauthorized access.

Restated, to violate CFAA laws, the court said that an employee must: (1) violate the employer’s use restrictions, (2) with the intent to defraud, and (3) by means of such conduct further the intended fraud and obtain anything of value. The decision underscores the need for employers to take protective measures in advance. Types of proactive measures that employers can take include:

Confidentiality/Non-Disclosure Agreements – specifying that all information an employee has access to is the property of the employer and remains so beyond termination.

Computers And Electronic Information Policy –adopting a policy that specifically addresses access to and use of company data and networks.

Documentation – Labeling documents that are confidential or contain trade secrets.

Entrance/Exit Interviews – Setting expectations for the treatment of confidential information should be established upon hire and restated during an exit interview.

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Our California business and employment attorneys can assist you with creating policies and procedures that help protect your business. For further information please contact Peter Bauman or David Binder at (818) 473-5720 or email your request to cabusinesslawreport@tharpe-howell.com.