Lock Down Your IP From Employee Theft Texas-Style: Non-Competes and Business Secrets

Businesses flock to Texas for many reasons. One reason: the strong tools available here to protect your intellectual property, or "IP," from employee theft.

Patent and copyright are fundamental, but what about IP that doesn't fit either mold? Customer data, profit margins and management-level discussions about business strategy all fall into that no-man's land. You don't want your ex-employees carting your secret playbook off to a new job with your direct competitor. The info is IP, but the feds can't help you.

Non-compete and non-solicit agreements fill the gap. For an ex-employee who knows your IP, working in certain jobs or soliciting certain customers is too dicey. IP theft is all too tempting. Call those jobs and customers off limits in a non-compete or non-solicit.

A few points from our earlier posts on non-competes and non-solicits:

- Non-competes have teeth.
- Reasonableness is the new battleground.
- Venue selection is key.

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Texas Non-Compete and Non-Solicit Agreements

Business secrets

Confidential information

Non-compete Agreement

Non-disclosure Agreement

Non-solicit Agreement

Trade Secrets

Even without a paper agreement, Texas law says that an ex-employee cannot take, use or disclose your business secrets. Here's the scenario—your VP Sales accepts a new job with a competitor, downloads your customer list and order history to a jump drive, then resigns. Foul ball.

The stolen info is probably trade secrets or confidential information. So long as you took some basic measures to keep the info secret and an ex-employee took it, you've got him in your crosshairs.

Just keep in mind:

- You can pursue an injunction against a data thief as you would against an ex-employee who broke a non-compete or non-solicit.
- When a key employee leaves, a forensic image should be taken immediately of any computer or smart phone issued to the employee.
- Use discretion when investigating data theft.

You might even make a federal case out of it. That is, proprietary data theft in violation of your written policies can trigger a federal claim. The Computer Fraud and Abuse Act, says the Fifth Circuit, can be used to prosecute an ex-employee data thief in a civil suit. Very helpful when filing in state court would land you in front of a judge who may be unfamiliar with trade secret protections.

We've written a tidbit on the CFAA too.

So there are your tools to protect the soft IP in your secret playbook. Are your tools sharp?

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