

Home Field Advantage to Protect Your Business Secrets



No matter what the game, you want the home field advantage. That's true even when you're prosecuting a lawsuit against an ex-employee who took your business secrets. You'd often rather be in federal court. And your employee manual may let you clinch that advantage.

The federal Computer Fraud and Abuse Act ("CFAA") could be your ticket to federal court. The CFAA imposes civil and criminal liability on folks who exceed "authorized access" to protected computers. Several federal courts, including the Fifth Circuit that covers Texas, say the CFAA comes into play when your employees violate your written computer use policies to steal or misuse your business secrets. That federal claim can land you in federal court.

The Ninth Circuit in California just jumped on the band wagon. In *Nosal*, the court upheld the CFAA indictment of an ex-employee who had allegedly broken his company's computer use policy. According to the federal indictment, he hired three current employees to download the company's business secrets from its server and start a competing business. The company's computer use policy restricted the use or disclosure of business secrets to legitimate company business.



Alan Bush
281.296.3883
abush@bush-law.com

Bush Law Firm
bush-law.com

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Your employee manual should cast a wide net on prohibited computer use. That way, you have several hooks into CFAA liability. Many companies get mileage out of prohibiting employees from:

- Using or disclosing business secrets for anything other than legitimate company business;
- Transferring business secrets to any storage device other than the company's server; and
- E-mailing business secrets to an employee's non-work e-mail accounts.

