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“Safeguarding Your Trade Secrets: Five Steps to Ensuring Protection”

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In today’s increasingly competitive marketplace, companies regularly attempt to mimic or duplicate their rivals’ most successful concepts. As such, executives are more sensitive than ever about guarding the proprietary information or product secrets that give their companies a competitive edge.

Neglecting to protect trade secrets can result in a wide range of problems, from a former restaurant manager using a company’s secret recipe at a rival business to the loss of valuable customers. This issue is relevant to all employees, so it is vital for human resources professionals to recognize and communicate what information constitutes a trade secret and what steps can be taken to effectively maintain a company’s assets.

In simplest terms, a trade secret is information that provides a unique economic benefit to its owner, is not known by others in the industry and has been kept confidential by reasonable means. If information meets these criteria, it may be covered by the Uniform Trade Secrets Act, and will most likely be protected by an individual state’s trade secret law.

It is imperative that businesses take sufficient steps to maintain the confidentiality of trade secrets so as to ensure the courts’ support if these secrets are wrongfully taken or disclosed. Below are five guidelines that HR professionals should follow to comprehensively protect their company’s trade secrets.

- 1. Include Confidentiality Agreements in Employment Documents –**
Companies should add to employment agreements and employee handbooks a passage that describes the need to keep all trade secrets confidential. Companies should also create non-compete and confidentiality agreements that thoroughly explain what is deemed a trade secret and the repercussions that could result from that information being shared with or used at a competing company.
- 2. Implement Proper Internal and External Security Measures –** Make efforts to physically safeguard documented confidential information by stamping all documents pertaining to the trade secret as “confidential,” and make sure that access to trade secret-related documents is available only to those individuals who “need to know” their contents. Additionally, work with IT staff to keep passwords updated on all electronic equipment that may contain trade secret information.
- 3. Create Policies that Track Documented Trade Secrets and Educate Employees on These Policies –** A company should maintain a procedure to track the location and distribution of any document containing trade secret information. After that procedure is implemented, it is the HR professionals’

responsibility to ensure that employees understand it and the importance of its execution.

- 4. Specify Trade Secret Protection in Franchise Agreements and Employment Documents** – The more people that know a trade secret, the more potential there is for that information to be leaked. This risk is especially important in franchises or businesses with multiple locations, be they restaurants or financial service firms. Therefore, it is important that a franchise agreement contains a provision specifically acknowledging the confidentiality of all company trade secrets.
- 5. Obtain Confidentiality Agreements with Third-Parties** – Be sure to have confidentiality agreements signed by any and all third-parties who are given access to trade secrets or who may be assisting in the execution or management of the trade secret process. These parties may include distributors, vendors, consultants of any capacity, facility visitors, contractors, outside companies and, in some cases, customers.

Trade secret confidentiality ultimately depends on two things: protocols which physically guard trade secrets, and employees' understanding of the importance of confidentiality. While many executives play a role in protecting trade secrets, HR professionals are ideally positioned to lead the effort, educating new and old employees on the importance of trade secret confidentiality. The more proactive steps a company takes to safeguard its trade secrets, the more likely their protection is to be validated in a court dispute.