

Protecting Your Trade Secrets in a COVID-19 World

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Remote work. Shuttered offices. Courthouse closures. Social distancing. Business in a COVID-19 world has been turned upside down. In our current climate, it is more important than ever to protect your intellectual property and corporate assets.

Working remotely creates more opportunities for employees to gain access to the company's trade secrets via their personal computers or electronic devices. This could lead to misappropriation of the company's trade secrets in the future. So what should companies do now?

Companies should remain vigilant to protect their trade secrets and should only disclose trade secrets to employees with a need to know such sensitive and proprietary information. Employees who are current employees now may be former employees in the future. If given sensitive information, it is important that the employer appropriately protect the information from improper disclosure or use.

There are a number of ways to protect trade secrets or other proprietary information. Some employers utilize employment agreements, non-disclosure agreements (NDAs), or other contracts to protect the assets of the company. Other employers rely on their employee handbooks, strict access restrictions, encryption, and other security measures to protect their intellectual property.

Three different types of misappropriation of trade secrets claims affect employers, including: (1) misappropriation by improper acquisition; (2) misappropriation by disclosure; and (3) misappropriation by use. Unlike the more stringent standards applied in the patent context, misappropriation by use in the trade secret context is broad and includes not only using the exact secret but using knowledge gained from the company to create a new product or method. Specifically, in the trade secret context, the employer must show that the employee, former employee, or third party substantially derived the design or product from the company's trade secrets.

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If you have questions about protecting your company's trade secrets or believe your company has been subjected to misappropriation of its trade secrets, please contact Melody Lynch to discuss your options.