

How small companies can shield trade secrets

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The Record

Q. I own a company that makes an adhesive utilizing a special formula I developed. I am expanding my business to add employees and I am concerned someone could copy the formula and start a competing company. Is there any way I can protect my business?

The situation and concerns you describe are common ones in the business world. This concern is even greater when the employee is knowledgeable about specific instrumental trade secrets upon which the company is based. The good news is the law does provide for certain protections of the trade secrets you describe.

While the law does not protect against "honest" and "fair" competition, there are certain protections for "formulas, processes, devices or compilations" that are used in business and provide an advantage over competitors. Depending on the nature and circumstances of your business, these trade secrets can include, but are not limited to: customer lists, chemical formulas and other confidential information.

While the law provides for general protection of trade secrets, these protections are not extended to common knowledge in the industry or public knowledge. Additionally, to qualify for protection under the law, the employer must take steps to protect the confidentiality of the information.

The level of protection will vary depending on the nature of the business and the trade secrets and can include, without limitation:

(1) limiting disclosure to necessary and key employees only; (2) securing it by password protection or other encryptions; (3) having specific protocols and policies in place for the employees' use of trade secrets; and/or (4) requiring confidentiality or non-disclosure agreements. The individual circumstances of each entity and each trade secret will dictate the level of security necessary to protect its confidentiality.

You should speak with an attorney to make sure your trade secrets are protected, as well as to develop proper internal confidentiality policies and agreements. In your specific situation, it is essential you develop certain security safeguards and protocols to ensure your formula remains confidential.

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