

TRADE SECRETS: THE SECRET OF EXIT INTERVIEWS

by Henry C. Krasnow

Editor's Note: Henry Krasnow graciously shared a memo he prepared for clients on the use of Exit Interviews in protecting intellectual capital. We have heard clients talk about their fears of an employee leaving because of the harm they can do with information they have. This is a tool to help business leaders address that concern. We appreciate Krasnow's generosity in sharing his intellectual capital!

Your company, like all others, has a very valuable collection of information which, if it were known to your competitors, would be devastating. Yet, protecting this information is extremely difficult and often not done as carefully as possible. Any business executive who has been involved in a lawsuit against a former employee or a competitor that wrongfully obtained valuable information knows that there is no way to guarantee a successful outcome.

Our experience in trade secret cases continues to reveal new ideas for their protection. This does not, of course, mean that the old ideas should be abandoned or ignored. Non-compete agreements, confidentiality agreements and careful precautions to keep secrets "secret" should never be abandoned or ignored.

But, many companies often overlook the opportunity to further protect their trade secrets that is offered by the exit interview. In other words, the exit interview can be used not only to improve management and decrease the possibility of a lawsuit, but also to improve the likelihood of protecting trade secrets.

Many employers have made great efforts to professionalize their HR Department so as to

effectively *obtain* useful information from departing employees, avoid unnecessary or unjustified lawsuits and apply that information so as to improve the retention of the existing employees.

Unfortunately, few employers see the exit interview process as an important part of their efforts to preserve and protect their trade secrets. Like so many other facets of business, there is no magic bullet or one-size-fits-all process to go through. Each company values different information. In some industries, simply knowing the birth date of the purchasing agent is critical. In others, knowing a customer's seasonal buying history is vital. In still others, knowing the sources from which the raw materials can be obtained is irreplaceable.

But, whatever it is that your company values, reliance upon a general "non-disclosure agreement" that was signed when the employee was first hired and does not specify what is to be kept secret or upon an unwritten "moral" obligation can be made more effective, if, at the exit interview, **the employee is advised in writing of the specific confidential information that they are expected to keep secret and of their obligation to do so.**

Protecting your trade secrets requires constant vigilance. However, all too often the value of these secrets is not fully appreciated until they have already been stolen, divulged or misappropriated. Certainly, if they are not important, no money or effort should be invested in protecting them. However, if they are valuable, a commensurate amount of effort and money should be invested into increasing the likelihood of their being protected.

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