

# Lock It Up: Securing Your Confidential and Proprietary Information

Edward J. Sackman, Esq.  
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# What to Protect?

- Business information
  - Confidential business information, including pricing, business plans and internal financials
  - Customers and customer contacts
  - Good will

# What to Protect?

- Intellectual Property
  - Patents: inventions
  - Copyrights: fixed original works
  - Trademarks: marks used in commerce
  - Trade secrets: good idea + secret (the secret sauce)

# How to Protect Business Information, Before and During Employment

- Protecting your business information
  - Handbooks
  - Confidentiality policies
  - Restrictive covenants (different rules in Massachusetts)

# How to Protect Business Information, Before and During Employment

- Handouts
  - Confidentiality provisions
  - Outline security measures: levels of access, password protection and physical security
  - Handbooks are not contracts

# How to Protect Business Information, Before and During Employment

- Confidentiality Policies
  - Policies vs. non-disclosure agreements
  - Good definitions required, must tell employees what is confidential
  - Follow through required, train employees, mark confidential documents as confidential and conduct audits

# How to Protect Business Information, Before and During Employment

- Types of restrictive covenants
  - Non-disclosure agreements
  - Non-competition agreements
  - Non-solicitation agreements

# How to Protect Business Information, Before and During Employment

- Restrictive covenants
  - Protects legitimate interest
  - Reasonably tailored to protect legitimate interest
  - No undue hardship
  - Not contrary to the public interest



# How to Protect Business Information, Before and During Employment

- Legitimate interests
  - Confidential business information
  - Customers and customer contacts
  - Good will
  - Trade secrets

# How to Protect Business Information, Before and During Employment

- Reasonably tailored to protect legitimate interests
  - What can't the employee do?
  - Where can't the employee do it?
  - For how long?

# How to Protect Business Information, Before and During Employment

- No undue hardship
  - General skills and knowledge
  - Can the employee still work
  - Severance packages

# How to Protect Business Information, Before and During Employment

- The public interest
  - No monopolies
  - Consider the field: doctors and emergency treatment

# How to Protect Business Information, Before and During Employment

- Demonstrating good faith
  - Early disclosure
  - Severability provision and “blue penciling”

# How to Protect Intellectual Property, Before and During Employment

- General rule: the employer owns the intellectual property the employee creates in the scope of his or her employment
- Be aware of:
  - Independent contractors
  - The tinkering employee
  - Joint authorship

# How to Protect Intellectual Property, Before and During Employment

- Invention assignment agreements
  - Can be done prior to invention
  - Characteristics of good agreements
  - Power of attorney provisions

# How to Protect Intellectual Property, Before and During Employment

- Work for hire agreements, including copyrights and sometimes trademarks
  - Characteristics of good work for hire agreements
  - Things to look out for
    - Employee-designed trademarks
    - Website design and hosting



# How to Protect Intellectual Property, Before and During Employment

- Protecting trade secrets with documents
  - Restrictive covenants
  - Handbook provisions and confidentiality policies
  - Be careful with independent contractors

# How to Protect Intellectual Property, Before and During Employment

- Protecting trade secrets with procedures
  - Password protection and levels of access
  - Site should be physically secure, no “wanderers”
  - Keep an inventory of laptops, cell phones, thumb drives and other mobile media

# How to Protect Intellectual Property, Before and During Employment

- Controlling technology
  - Control email access
  - Control thumb drives, external hard drives and other mobile media
  - Control cell phones

# Post-employment and Beyond

- The exit interview
  - Remind the employee of ongoing obligations
  - Collect all equipment
  - Outgoing confidentiality agreements
  - Document cutting off access

# Post-employment and Beyond

- Considerations post-employment
  - Preserve equipment
  - Handling the employee who leaves abruptly
  - Post-employment letter and request for attested statements

# What do I need to do?

- What do you have that you could protect?
- Is it worth protecting?
- Are you appropriately protecting it?
- What do you need to do to fix it?

Ned Sackman is a member of the Litigation Practice Group, Business Law Practice Group and the Labor and Employment Practice Group. He can be reached at 603-623-8700 or [nsackman@bernsteinshur.com](mailto:nsackman@bernsteinshur.com)