

Don't let your company lose trade secrets

Unless you protect valuable or sensitive business information, it could end up in the hands of unscrupulous third parties. Fortunately, there are ways to prevent your business secrets from going out the door.

1. Be careful what you disclose

Sharing your business secrets with a third party is a normal part of working life for most small companies. Whether it is disclosing financial information to a potential investor, providing specifications of an innovation to a manufacturer, or showing your customer list to an outsourcing partner, there will be times when sharing confidential information is unavoidable.

When you share your information with someone else, there is a chance that they will use it to their commercial advantage without your permission. Disclosure of confidential information is a practical necessity in today's world, but there are steps you can take to minimise the risks of sharing this information.

2. Contractual protection of business information

Staff have a statutory duty of confidentiality towards their employer which, combined with clauses in an employment contract, keeps them from running off with your business secrets to competitors. But this does not extend to others working for you who are not in a strict employee-employer relationship.

Non-disclosure agreements (NDA's) or 'confidentiality agreements' as they are also known, are a contractual means of protecting your valuable or sensitive information when you need to disclose it to a third party. These can be particularly useful for small firms when dealing with outsourcing companies or freelance workers.

Having an NDA gets around the issue of having to rely on patents or trade marks or your right to confidence in common law. It's so much simpler to say 'Here's an agreement and here are the terms'. Off-the-shelf NDA's can be downloaded for free from the Internet, but having a bespoke NDA drawn up should cost only a low three-figure sum.

However innocent mistakes are easily made. For example, everything believed to be confidential needs to be defined in an NDA. If you call information confidential when it patently isn't, it calls into question other items defined as confidential and the document becomes unenforceable. In addition, NDA's should state exactly how a third party can use the information disclosed to them.

For example, imagine you disclose a secret component which the recipient goes on to manufacture and profit from albeit continuing to keep the nature of the component secret. It would render your NDA pointless if all you'd asked was for the component to be kept secret. Importantly, NDA's also need to state :

- a.) how long the obligation of confidentiality lasts.
- b.) that you cannot guarantee the information's accuracy.
- c.) that you retain all the rights to any intellectual property in the information.

3. Suing for breach of a non-disclosure agreement

In the event of a breach of an NDA, you can sue for damages. Alternatively, if you suspect a breach is going to happen you can seek a court injunction. However, these remedies can be expensive and time consuming and it can be difficult to quantify any damages. Having an NDA is extremely useful, but don't just put it in a drawer. You need to ensure your information is being kept confidential and you are satisfied with the measures put in place to keep it so.

REMEMBER !!!

Once information is out in the public domain there's no legal method of making that information confidential again. Put procedures in place to determine what information staff have the ability to access and, more importantly, who can release that information to third parties. Prevention is better than cure!!