

# Trade Secrets & Employee Raiding UPDATE



A Periodic Update From the Steptoe & Johnson LLP Trade Secrets & Employee Raiding Team

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## Steptoe & Johnson LLP Announces New Trade Secrets & Employee Raiding Update

Welcome to the first issue of Steptoe & Johnson's *Trade Secrets & Employee Raiding Update*. This is a periodic publication designed to provide companies with useful information on protecting trade secrets in today's competitive marketplace.

### Checklist of Things To Do With Departing "Key" Employee

- Conduct "triage" interview with management: what information are we most concerned about losing?
- Inventory sensitive "hard copy" documents to which departing employee has/had access.
- Check that "one-of-a-kind" documents and items are under lock and key.
- Inventory sensitive electronic materials to which departing employee has/had access, including source code; note "last edit" dates and "edited by" information.
- Review status of employee acknowledgment forms – should be signed by employee on date of hire/beginning work and then annually thereafter.  
If you do not have any acknowledgment forms in employee's file, have employee sign forms at the exit interview.
- Review status of trade secret/confidentiality agreements with employee.
- If employee has signed non-competition or non-solicitation agreement, do not assume that it is legally enforceable: ask counsel to review it immediately to determine enforceability.
- If management has reason to suspect that employee is currently engaged in theft of trade secret/confidential info., arrange for immediate forensic imaging of hard drive on employee's computer.
- Once exit is confirmed, schedule formal exit interview with both HR professional and manager.



### Checklist For Exit Interview:

- Ask employee what he/she will be doing for the new employer.
- Verify return of all confidential materials, or collect them at the interview. Be sure to ask whether there are any materials outside of the office (at home).
- Tell employee about the information that they have been exposed to that the company considers a trade secret, including information regarding the roles and skills of other employees within the company.
- Remind employee of his/her legal duty not to use or disclose this or any other trade secret information.
- If applicable, remind employee of legal duty not to solicit customers/employees.
- If applicable, remind employee of his/her legal duty not to compete.
- Provide employee with copy of any agreement he/she has signed.
- If employee is moving, ask for new contact address.
- Document the interview.
- Follow up with letter to employee reminding him/her of obligations.
- If management decides to exit/fire employee immediately, arrange for security to accompany employee to desk to gather personal belongings and escort from building.
- Do not make disparaging remarks about the new employer to departing employee or to remaining employees.
- Do not make disparaging remarks about departing employee.
- Be sure to cut off building access.



## Computer Security

- After exit, resist the urge to turn on the ex-employee's computer.  
–Leave it alone/call someone who understands computer forensics.
- Pull all backup media, particularly backup tapes, out of rotation to avoid loss of potentially relevant forensic data.
- Suspend normal HR and IT procedures to reallocate ex-employee's space on the server to avoid loss of potentially relevant forensic data.
- Make sure that the employee's e-mail account remains untouched.
- Be sure to cut off remote login access.

## Documentation Checklist

- Document each investigatory step to avoid chain of custody questions that may be raised by your opposition's expert.

- Interview ex-employee's co-workers to see whether they know of any improper conduct by ex-employee prior to departure.
- Draft letter to new employer informing new employer of ex-employee's legal duty not to use or disclose any trade secret information.
- Document completion of each checklist step to establish that you have made reasonable efforts to preserve the secrecy of your confidential and trade secret info.  
–Retain the documented checklist for at least 3 years.

Step toe attorneys regularly counsel and represent employers in connection with the movement of employees to and from competitors. This can involve issues of violation of contractual provisions restricting competition or the solicitation of employees or claims of violations of state trade secret statutes. These cases can be on behalf of employers facing the loss of key employees or acquiring employees from a competitor.

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