

Your new employee is accused of stealing trade secrets - now what?



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Let's say a top-notch engineer in your industry wants to leave their employer – a competitor of yours – and join your organization. They never signed a non-disclosure or non-compete agreement, so there should be no worry, right?

Maybe. Maybe not.

What happens when you hire the engineer and, some time later, you receive a cease and desist letter from their former employer claiming they misappropriated their trade secrets? Trade secrets are protectable, even in the absence of a non-disclosure agreement.

Here are the five steps you should take immediately:

1. **Quarantine all accused devices:** Remove the employee's computer from service. Do the same for any separate laptop or smartphone they may have been issued. Collect all thumb drives and other media that may contain electronic files belonging to the former employer. Have all devices imaged by a third-party neutral forensic expert.
2. **Consult counsel:** As with any dispute where litigation may be imminent, getting legal counsel involved at the outset is always preferable. Counsel can help you manage the quarantine of devices, interview employees, and provide advice on the conflict and waiver issues (including instructing you to obtain advice on conflicts from separate independent counsel). You and the employee may choose to be jointly represented, or you may choose to enter into a joint defense agreement, but any such choice should be an informed one.
3. **Issue a preservation letter/litigation hold:** Interview the employee to determine what may have been taken, where it might now be stored, and who the employee has spoken with at your organization. Issue a preservation letter to all individuals who may have come into contact with the information at issue and instruct your IT department to cease routine document destruction.
4. **Determine whether your organization and the employee should be represented separately:** The potential for conflicts is front and center in this type of dispute. If the employee has taken trade secrets from their former employer, you may want to distance yourself from that employee and mount a separate defense.
5. **Evaluate a response to the cease and desist letter:** Remember, even if the employee assures you that they have not shared any of your competitor's information

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with any of your employees, you can be confident that your competitor will assume the worst. Appearances matter. Be proactive in responding to the cease and desist request. If you do not, a lawsuit will almost certainly follow. By responding, you preserve the chance of a negotiated resolution without the need for costly litigation.

Following these steps will greatly increase the chance of reaching a resolution promptly. Failure to take these steps, on the other hand, can lead to significant expenditures of time and money.