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Court Enforces Non-Compete Agreement Based on Former Employee's access to Confidential Information

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Illinois provides protection for the wrongful use of confidential information under the Illinois Trade Secrets Act. A trade secret is generally defined as information that is sufficiently secret to derive economic value from not being generally known to other persons who can obtain economic value from its use or disclosure. In determining whether a trade secret exists, the court considers the extent to which measures are taken to keep the information confidential, whether the information is known by employees and others involved by the business, the value of the information to the employer and its competitors, the amount of money expended by the employer in developing the information and the ease or difficulty with which the information could be properly acquired or duplicated by others. Recently the 7th Circuit Court of Federal Appeals considered whether an employee who signed a confidentiality agreement was in violation of the agreement when the employee went to work for a competitor.

In that case, the employee agreed as part of a promotion to sign a confidentiality agreement wherein he agreed that he would not go to work for a company that manufactured a product for which he had access to confidential information during his employment. After his termination, he went to work for a direct competitor and his former employer sued alleging violation of the agreement. Although the former employee had access to confidential information, he denied using the confidential information in his new position. The court found that because he had knowledge of the manufacturing process which was not known to the competitor, he may be tempted to use his knowledge in performing his work. As such, the court found that keeping a business executive with a wealth of information from taking an equivalent position at a rival is reasonably necessary for the protection of the employer's business interests when the executive's use of trade secrets would be hard to detect. For further information, please visit our web site at www.joettedoran.com.

This article is not intended as legal advice. You should consult with an attorney for individual advice regarding your own situation.

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