

# Employees Without Baggage

Trade Secrets and Intellectual Property Protection

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Davis Wright Tremaine LLP



# Trade Secrets Protection Begins at the Time of Hire

## □ Letter to New Employee

*“We are delighted that you have agreed to join the Company as a [position]. We have no need to learn and do not want any confidential information you have received at your prior employer. We ask that you honor the following rules to ensure that you do not breach any obligation to your prior employer. . . .”*

# Trade Secrets Protection Begins at the Time of Hire

## □ Acknowledgement Regarding Former Employers' Trade Secrets

*“Employee represents that he has disclosed to the Company any agreement to which Employee is or has been a party regarding the confidential and/or trade secret information of others and Employee understands that Employee's employment by the Company will not require Employee to breach any such agreement. Employee will not disclose protected confidential information of third parties to the Company . . . .”*

# Trade Secrets Protection After Hire

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- ❑ **Non-Compete Agreement Unenforceable in California**
- ❑ **Trade Secrets Act Protection -- What is a “Trade Secret”?**
  - (a) Information is **Secret**
  - (b) Information is **Valuable**
  - (c) **Reasonable Efforts** to Maintain Secrecy

# Trade Secrets Protection After Hire

## □ Confidentiality Agreements

*“The Company’s Confidential Information -  
“Confidential Information” means  
confidential or proprietary information and/or  
techniques entrusted to, developed by, or  
made available to Employee, whether in  
writing, in computer form or otherwise or  
conveyed orally, including but not limited to .  
...”*

# Trade Secrets Protection After Hire

## □ Non-Solicitation Agreements – Customers

*“During the term of this Agreement and for a period of two years following the termination of this Agreement, Employee shall not directly or indirectly (a) solicit for business any customers of the Company or its affiliates ...”*

# Trade Secrets Protection After Hire

## ❑ Non-Solicitation Agreements – Employees

*“During the term of this Agreement and for a period of two years following the termination date, Employee shall not directly or indirectly solicit for employment or for independent contractor work any employee of the Company, and shall not encourage any employee to leave the employment of the Company.”*

# Trade Secrets Protection After Hire

## □ Assignment of Inventions

*“Company's Ownership. Employee agrees that all inventions, discoveries, developments, and trade secrets, whether or not patented, and whether or not reduced to writing or practice, that are or have been conceived or developed during the Employee's employment with the Company, either alone or jointly with others, if on the Company's time, using the Company's facilities, relating to the Company or to the Company's industry, shall be owned exclusively by the Company . . . .”*

# Trade Secrets Protection Post-Employment

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- ❑ Exit Interview and “Legal Debriefing”
- ❑ Letter to New Employer

