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Illinois Trade Secrets Act and Confidentiality Agreements

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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 disclosure or use and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy or confidentiality. In determining whether a trade secret exists the court considers the extent to which the information is known outside of the employer's business, is known by employees and others involved in the business, the measures taken by the employer to guard the secrecy of the information, the value of the information to the employer and to his or her competitors, the amount of effort or 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, an Illinois Appellate Court considered whether an employer's customer list was considered a trade secret. In an action against a former employee, the court found that the employer's customer information was not a trade secret because the employer failed to take "reasonable steps" to keep the information confidential. The court found that although electronic copies of customer information were provided to employees on a need-to-know basis, no other steps were taken to restrict any physical copies of the information. For example, there was no evidence that the employer advised their employees, verbally or in writing, that the information was confidential, and employees were not required to sign a confidentiality agreement. However, in another case, an employer's customer information was found to be protected as a trade secret because of the numerous security measures the employer undertook to protect the information where the employer kept its offices locked, had special computer access codes for employees, limited customer information to persons on a need-to-know basis, kept hard copies of customer lists locked, kept salesmen's call books and customer cards locked, had security cameras, and required employees to sign confidentiality agreements that stated that the names of the employer's customers could not be used or disclosed because they belonged to the employer and were confidential. Accordingly, both employees and employers should carefully consider the use and enforceability of a confidentiality agreement to protect confidential information in light of the security measures taken by the employer to protect information. For additional employment law 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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