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**Departing Employees: How Employers
Can Protect Their Trade Secrets From
Walking Out the Door**

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Steven D. Brown

- How to ensure new employees are not bringing proprietary/confidential information and trade secrets.
- Strategies for monitoring data and electronic devices.
- Questions

Scenario



- Madison Technology Corporation (“MTC”) manufactures Distributed Antenna Systems (“DAS”) in Fishersville, VA. MTC sells DAS to Verizon Wireless, AT&T, Sprint and T-Mobile. DAS is used in places with large crowds (stadiums, arenas, hospitals, malls, etc.) so everyone can get reception on their cell phones. MTC has \$500,000,000 in sales and 200 employees.
- Many of the employees are engineers and those engineers support the sales staff. There are a number of proprietary documents, including a pricing module, strategic plans, customer requirements, and confidential design and production plans for DAS. You are the CEO of MTC.

Scenario cont.



- Richmond Cellular Solutions (“RCS”) is one of MTC’s major competitors. RCA also manufactures DAS and sells it to the same wireless carriers. Richmond has \$100,000,000 in sales and 75 employees. Richmond has engineers and sales staff. Richmond also has many of the same proprietary documents.
- This morning, your VP of Development, Jack London, calls you and informs you that he's about to finalize a deal to bring 2 sales people and 1 engineer from RCS to MTC. The sales people are responsible for \$10,000,000 in sales for RCS.

Scenario cont.



- What do you want to know about the departing employees from RCI and soon-to-be Madison employees?
 - Non-compete, non-solicitation agreements?
 - Courts look at whether it is narrowly drawn to protect the employer's legitimate business interest, is not unduly burdensome on the employee's ability to earn a living, and is not against public policy.
 - Other agreements (confidentiality, inventions, etc.)?
 - Trade secret issues? VUTSA.
 - Other issues (computer and phone, duty of loyalty, etc.)
- What should you be asking the departing employees before they join you?

Departing Employee Checklist



1. Did _____ do any work associated with _____ (new employer) during the normal workday while at _____ (old employer's offices)?
2. Did _____ solicit any employees or contractors prior to the time that he left _____ (old employer)?
 - a. Were there any plans made by _____ with any remaining _____ (old employer) employees or contractors to bring them to _____ (new employer)?

Departing Employee Checklist cont.

- b. Have there been any discussions by _____ with any of the remaining _____ (old employer) employees or contractors of the confidential salaries and pricing structure of _____?
- c. Was there any discussion of which clients would leave _____ (old employer) and which employees or contractors would leave _____ (old employer)?
- d. Are there others waiting to resign as part of a plan to see how it goes with _____ to _____ (new employer) before he quit?

Departing Employee Checklist cont.

3. Did _____ solicit or tell any customers that he was leaving _____ (old employer) prior to leaving _____ (old employer)?
4. While still employed with _____, did _____ maximize all business opportunities for _____ and did not divert any work for _____ (new employer)? Did he keep bringing in business or were there some clients put off because he knew he was leaving?
5. Did _____ delay or protract any business opportunities away from _____ in favor of _____ (new employer)?

Departing Employee Checklist cont. LR

6. Did _____ take his _____ laptop or work computer? Computers can be traced and searched. Nothing is really deleted.
7. Did _____ use his home computer or anyone else's home computer for anything associated with _____ (new employer)?
8. Did _____ use his personal phone, PDA or anyone else's personal phone or PDA for anything associated with _____ (new employer)?

Departing Employee Checklist cont.

9. Did _____ use anyone else's phone, PDA, computer, etc. to do work for _____ (new employer)
10. Did _____ put anything on an external harddrive, thumb drive, flash stick, CD or Google Drive that has information from _____ (old/current employer)?
11. Did _____ have a computer or PDA wiped by a professional so that there is no trail of what he/she did?
12. Did _____ take any _____ documents? [Address books? Outlook Contacts? Rolodex? Contracts? Other customer information?

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Departing Employee Checklist cont. LR

13. Did _____ send e-mails about _____ (new employer) to anyone, (including from any computer), from a Yahoo! or Hotmail or Google or Twitter or Facebook or MySpace account (or any other means (not limited to the ones mentioned here)? Everything can be traced.

14. Did _____ destroy any documents or any computer information?

15. Have the potential new employee return all documents, records, data, files, laptops (everything) to the former employer. Return all computers and phones. If have company information on personal computers, phones and tablets, don't destroy or delete anything. That includes things at your house as well.

Departing Employee Checklist cont. LR

16. Assume a private investigator is going through everything and watching everything.

Strategies for Protecting Confidential Business Information



- Limited access to confidential business information by password protected platforms.
- Monitoring the use of flash drives. Only allow company registered flash drives to be attached.
- Google Drives should be limited
- When employees resign, lock them out immediately from the computer system.
 - Give limited access if you are going to let them stay during the notice period.
 - Analyze if employee has accessed or downloaded anything.

QUESTIONS?