

Confidentiality Agreements

Confidentiality agreements, also known as secrecy agreements or non-disclosure agreements, are vital contracts for employers seeking to protect confidential information. These documents are often used when companies have secret processes or products that are in the works prior to licensing. For many technology-based companies, confidential information is one of their most valuable assets.

Functions of a Confidentiality Agreement

Confidentiality agreements serve several primary functions for employers:

- Protect sensitive information from being disclosed to others. If confidential information is revealed to competitors or the public, the company has reason to claim a breach of contract and can seek damages from the employee at fault.
- Prevent the forfeiture of patent rights. Federal law prohibits the public disclosure of inventions and such a disclosure is considered a breach of patent rights.
- Define what information can and cannot be disclosed to others. Confidentiality agreements specifically outline what information is to be kept confidential – including data, know-how, prototypes, computer software, test results, engineering drawings, tool, systems and many others. Confidentiality agreements also protect information concerning mistakes that a company

made while developing a product or process. By obtaining this information, a competitor could bypass setbacks and potentially create a better product or process.

Exclusions

Most confidentiality agreements exclude certain information from being classified as secretive. Within an agreement, the employer should outline a definition for this information as well as the information being protected. The following items are

not typically considered confidential:

- Information that the employee had prior to receiving it from the employer.
- Information that becomes public knowledge not by way of the employee revealing it.
- Information that the employee learns from a third party.
- Information that was public knowledge before the employee received it from the employer.
- Information independently created by the employee.

Other Considerations:

- Confidentiality agreements should be required for all employees who have access to company secrets and other proprietary information.
- Employers should express the importance of confidentiality to all new employees and should remind current and exiting employees of such agreements that they signed.
- Employers should not allow employees access to confidential

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information prior to signing a confidentiality agreement.

- Confidentiality agreements must establish a specific time period that it is valid. This includes how long the information should be kept in confidence.
- Since state laws differ, have your legal counsel review your confidentiality agreement especially if you're using a pre-made general confidentiality agreement. Additional provisions may need to be included.



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