



Employee Defection and Trade Secrets

Overview

In business, employees come and go. New technologies and working arrangements are making it easier for key personnel to take proprietary information and customer relationships out the door and damage their former employers. The problem is especially acute for multistate and multinational businesses, whose cross-border operations are governed by many, often differing, legal requirements.

Fisher Phillips' Employee Defection and Trade Secrets Group represents businesses in all the restrictive covenant and trade secrets issues they face. Our attorneys, many of whom have more than 25 years solely dedicated to this field, help implement and roll out robust frameworks to anticipate, prevent, detect, and defend against employee theft and carelessness. We'll work with you to uncover issues early, recruit the right talent, and separate from employees effectively while safeguarding proprietary information.

We advise and litigate on matters including covenants not to compete, non-solicitation and non-disclosure agreements, unfair competition, employee raiding and team moves, misappropriation of trade secrets and confidential business information, duty of loyalty, and federal laws including the U.S. Defend Trade Secrets Act (DTSA), the U.S. Computer Fraud & Abuse Act (CFAA), and Economic Espionage Act (EEA).

Our clients include some of the largest financial services institutions in the United States, large manufacturing and construction companies, and leading biotech, distribution, healthcare, insurance, pharmaceutical, medical devices, and retail businesses. We also work with many local and regional businesses.

PROTECTING ASSETS AND INFORMATION

Fisher Phillips' EDTS team helps local, multi-state and multi-national employers implement consistent, practical approaches and comply with varying state, federal and international laws and workplace cultures.

We draft and implement strong policies and agreements to protect confidential business information, client relationships, and competitive assets against employee defection and negligence. Routinely creating nationwide confidentiality and non-compete standards for large national corporations, our lawyers are up-to-the-minute on the covenants and agreements that are enforceable across various geographies. We tailor the minimum number of documents to provide the maximum amount of coverage, allowing you to smoothly roll out agreements that are effective for all your employees, no matter where they work.

Fisher Phillips uses comprehensive forensic methodologies to rapidly search for and identify evidence of theft – and forcefully defend your rights.

STRATEGIC PLANNING AND COUNSELING ON EMPLOYEE TRANSITIONS

We work with clients to develop strategic employee recruiting and transition plans that shield sensitive data and protect against litigation. This includes assessing the risk of hiring plans, formulating strategic options to minimize legal risks while preserving the business value of expansion opportunities, and guiding the company and recruits through onboarding. Our team emphasizes early detection and assessment of risk – including the use of monitoring and surveillance technologies – throughout the employee lifecycle.

We have deep experience with issues arising in mergers and acquisitions, including restrictive covenants in purchase agreements, post-closing non-compete and restrictive covenant and retention agreements for key employees, and enforcing sale-of-business covenants and handling employee “raids.” Our lawyers regularly devise effective restrictive covenant and asset protection programs to position clients for potential acquisition, venture capital investment, or private equity financing.

ENFORCEMENT, LITIGATION AND DISPUTE RESOLUTION

We understand the importance of acting quickly to protect data. Our national team has rapidly mobilized to successfully protect clients' interests in courts across all 50 states and is accustomed to initiating and defending temporary restraining order actions in diverse jurisdictions with little notice.

We play offense and defense, prosecuting to protect clients' confidential business information and trade secrets and defending against competitors who assert baseless claims. Our EDTS team handles contentious non-compete litigation and trade secrets disputes involving employee raiding and team-moves throughout the U.S. and across the globe. We have experience handling cross-border restrictive covenant litigation, including prosecuting and defending anti-suit injunction

actions in both U.S. and E.U. jurisdictions. We frequently handle matters involving arbitration of covenants not to compete in sectors such as the securities industry and represent clients in arbitrating and/or mediating disputes in all relevant fora.

Wherever possible, we seek to practically and economically resolve trade secrets and covenants issues without resort to litigation. This often involves conducting initial forensic reviews that lead to productive settlement discussions, which can resolve the whole matter and recover all pertinent information.

HIRING FROM COMPETITORS

Importing talent from the competition can be invaluable, but it also can put you at risk. Our team helps clients determine whether new employees have enforceable restrictive covenants and whether they are bringing along someone else's trade secrets. We'll work with you to assess potential exposure from new hires and develop procedures to mitigate the dangers that accompany bringing employees from rivals on board.

Insights

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Joseph P. Shelton, Greg Grisham, Michael P. Elkon

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Lauren Laing, Braden Lawes

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Recent Experience

Representative Work

- Negotiated a favorable stipulated injunction for a home health care agency after a former executive violated a restrictive covenant agreement by resigning to work for a competitor.
- Defeated multiple temporary injunction motions on behalf of a national financial services company and its employees across the country.
- For a technology staffing company, obtained a TRO restraining two employees from establishing a competitive business and protecting confidential information and trade secrets.
- Successfully represented a global reinsurer in a cross-border restrictive covenant matter against a former executive, involving injunctive relief litigation in the U.S. and the U.K.
- Advised a global infrastructure management organization on the assignability and sufficiency of its M&A target entities' existing restrictive covenant and key executive agreements throughout multiple asset and stock purchase transactions.
- Obtained a temporary restraining order, preliminary injunction, and permanent injunction on behalf of a national bank against a former contractor who misappropriated computer source code, refused to return the bank's computer and threatened to sell trade secret and confidential information.
- Navigated complex multi-jurisdictional restrictive covenants for an E.U.-based private equity firm in recruiting multiple U.S.-based executives from biotech industry competitors into its portfolio companies without any litigation.
- Obtained preliminary and permanent injunctions and appointment of federal monitors for one of the world's largest hotel companies against several former employees and a major competitor for trade secret misappropriation and violation of the Computer Fraud and Abuse Act (CFAA).
- Defeated a preliminary injunction matter on behalf of a global manufacturer of specialty chemicals and three of its employees, defeating multiple motions for injunctive relief.

Key Contacts



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