



When is it okay for an employee to steal trade secrets?

Insights

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When is it okay for an employee to steal trade secrets? According to the New Jersey Supreme Court, the answer is when an employee is trying to preserve evidence of discrimination.

In *Joyce Quinlan v. Curtiss-Wright Corporation*, the New Jersey Supreme Court addressed the question of whether an employee may take confidential documents from his or her employer for the purpose of helping in the prosecution of a discrimination claim. (Click [here](#) to read the opinion.) The Court emphasized that it had to strike a careful balance between an employer's right to conduct its business while safeguarding its confidential information and an employee's right to be free from discrimination and retaliation for speaking up about perceived discrimination. The Court observed that neither right is absolute, and achieving the appropriate balance requires an intensive analysis.

Factual Background

Quinlan worked for Curtiss-Wright for approximately twenty years when she was passed over for a promotion by a male employee whom she believed to be less qualified. In her role as the Executive Director of Human Resources, Quinlan had access to many employee files. She began to review these files looking for evidence to support her claim that Curtiss-Wright engaged in a pattern of widespread gender discrimination. She collected 1,800 pages of documents, some of which contained employees' confidential personal information, including Social Security numbers and salary information. Some time later, Quinlan was given another document concerning the job performance of the male employee whom she believed had been wrongfully promoted. She gave all of these documents to her lawyers, and needless to say, the parties had widely different opinions on whether she should be permitted to use them in litigation against the company. After learning that her pilfering of documents was an ongoing affair, Curtiss-Wright terminated her, and she amended her complaint to assert a claim for retaliation.

"Totality of the Circumstances" Test

After a tortured procedural history, the case found its way to the New Jersey Supreme Court. In deciding the issue, the Court adopted what it termed a "flexible, totality of the circumstances approach that rests on consideration of a wide variety of factors." These factors are as follows:

First, courts should evaluate the manner in which the employee obtained the documents. Were they stumbled upon innocently in the course of the employee's ordinary duties? Or did the employee rummage through files or snoop around someone's office?

Second, courts should consider what the employee did with the documents. Did the employee simply give the documents to his or her attorney for the purpose of obtaining legal advice? Or did the employee leak the documents to third parties not entitled to see them?

Third, courts should evaluate the content of the documents to assess the strength of the employer's interest in maintaining confidentiality. Does the document contained privileged or proprietary information?

Fourth, did the employer have a clearly defined confidentiality policy? Has the employer routinely enforced that policy in the past? Did the employee act in violation of the duty of loyalty to safeguard confidential information obtained during employment?

Fifth, was the document disclosed in a manner that was unduly disruptive to the employer's business? This factor should be assessed in conjunction with the degree of relevance of the document. In other words, was the document taken merely for the purpose of casting aspersions, distracting from the issues, or to sensationalize a claim? Or was the document central to the discrimination claim?

Sixth, why did the employee take the document instead of merely describing it to counsel so that it could be sought in discovery?

Seventh, all of the above factors must be considered in the context of the strong competing interests – the employee's interest in being free from discrimination and retaliation, and the employer's interest to operate its business within the bounds of the law with an expectation that its employees will behave with loyalty.

A "Hair-Splitting Distinction?"

Applying these factors, the Supreme Court upheld the jury verdict and punitive damages awarded in favor of Quinlan. In doing so the Court observed a fine line. Curtiss-Wright could terminate Quinlan for the act of taking documents, but it could not terminate for her for using them in her claim against the company.

In a scathing dissent, Justice Albin criticized what he saw as a "hair-splitting distinction made by the majority...that defies ordinary understanding." According to Justice Albin, the majority's holding "sends a disturbing signal to both the business community and the bar that employee theft may actually pay."

The majority opinion was reached after a painstaking review of analogous federal decisions. It underscores the lesson that employers should not assume that they can terminate an employee for taking documents in support of a discrimination claim. Employers may feel uncertain about their authority under these circumstances, but the New Jersey Supreme Court believes employees are on

equally uncertain ground because they “run the significant risk” that their conduct will be found unprotected by the courts.

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