



Protecting the confidential information of your business

If you are concerned that an employee has passed on your confidential information to third parties, commencing Court action may not always be the best solution. A better solution may be to manage this potential risk by investing in your contract of employment, your Company Policies and your IT systems.

This is best illustrated by the case of Actrol Parts Pty Limited and its employee, Mr Coppi.

Mr Coppi resigned from his employment and was placed on “gardening leave” for his four week notice period. Shortly before his notice period ended, Actrol discovered that Mr Coppi had sent a number of internal sales records to his personal email address in the weeks leading to his resignation, and that he was about to start a new job with a competitor.

The employer obtained a court order to search Mr Coppi’s home for confidential information, seizing computers and the like. After forensic analysis of these devices it was found that Mr Coppi had not passed on any confidential information to third parties. He had a legitimate reason for sending the records to his personal email address, being a need to work from home.

The employer could not point to any loss or damage arising from the alleged leaking of confidential information (eg. a loss of business to competitors).

Notwithstanding that Mr Coppi did not pass on his employers’ confidential information, Mr Coppi did breach his contract of employment by commencing his new job one day before his notice period came to an end. Whilst the court held that Mr Coppi had technically breached his employment contract, the case was a waste of the Court’s time, and the Court ordered the employer to pay Mr Coppi’s legal costs, which were substantial. Actrol also had to pay its own substantial legal costs.

The real issue for Actrol was that Mr Coppi’s contract of employment did not contain provisions protecting Actrol from potential competition and solicitation after cessation of employment.

This case shows that it is far preferable to take pre-emptive steps to protect confidential information of your business, rather than relying on court action “after the horse has bolted”. Pre-emptive action can minimise the risks that confidential information will be misused in the first place, and also ensure that, if misuse does occur, your business is in the best possible legal position to attempt to remedy the problem.

The pre-emptive action you should take includes:

- Reviewing your employment contracts to ensure they contain obligations concerning confidentiality, and restraint on competition and solicitation.
- Have these clauses been legally reviewed to ensure that they are enforceable, and they are tailored to the circumstances of each employee;



- Reviewing your employment policies and procedures to ensure they adequately explain the nature and importance of confidential information to your business, and contain appropriate expectations;
- Ask your IT consult to confirm that your IT security systems adequately trace dissemination of confidential information. For example, are you able to monitor cloud activity, external device activity, printing and email and do you have backup systems in place that can trace deletion of material?

If you require assistance to either draft employment contracts, policies and procedures or review of these or have any business related queries, please contact Michael Battersby or Ken Gray on 02 4731 5899 or email us at commercial@batemanbattersby.com.au.