

Keeping (Trade) Secrets Amid a Reduction in Force

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With the US economy officially in a recession as of June and business closures continuing due to rising coronavirus infection rates, more companies may need to conduct layoffs in the coming months. Although discharging employees who have worked with the company's confidential information can increase a company's exposure to trade secret theft, advance planning can help companies head off many of the risks.

Before announcing any reduction in force, companies should figure out which employees have access to vital trade secrets. Armed with that knowledge, companies can monitor specific employees' computer activity around the reduction in force and capture a forensic image of a specific employee's computer if necessary. A document management software program with features indicating who has opened, edited, and closed documents is a valuable tool for tracking activity related to a company's sensitive information. Setting up a permissions system that only allows select employees to view confidential information is another way to ensure that only employees that need access to confidential and highly valuable information have it, and to further prevent employees from taking secret information before their departure. After the reduction in force, the company can assess its vulnerability to trade secret misuse by conducting an audit to determine what files or information have been changed or copied.

Along with using technology for auditing and traceability, including confidentiality provisions in severance agreements can further support a misappropriation of trade secrets claim if a company needs to file a case in court.

Taking a close look at who knows what and what they're doing with the information and carefully crafting severance agreements can help companies keep critical secrets in-house when they need to cut staff.

Be on the lookout for the next blog posting in this series — on how to detect early signs of trade secret theft by competitors.

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Adam P. Samansky is an intellectual property litigator at Mintz. He primarily serves pharmaceutical, medical, high tech, and defense industry clients. Adam handles patent, trademark, and trade secret matters for innovators and investors, and he has a successful record in Hatch-Waxman litigation.



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