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Archives; Social Media & Technology

The Trade-Offs Presented by Employees Electronic Access to Confidential Business Information

As discussed in the [previous post](#), protecting a company's confidential business information and trade secrets is increasingly problematic in this era of electronic communication. Even if an employer has the most detailed and well-written policy regarding the use and disclosure of confidential business information, it must take steps to ensure that the policy is being followed by employees. If the employer fails to do so, or fails to take disciplinary action when the policy is violated, it may lose its ability to succeed on a legal claim for misappropriation of that information. More importantly, the company will increase the likelihood that its confidential business information will get improperly disclosed and used.

It is, of course, commonplace these days for employers to provide employees remote access to computer systems. It is also common for hard-working and well-intentioned employees to electronically check out employer information for purposes of working at home after normal work hours, whether through downloading a copy of the document to a flash-drive or simply emailing a copy of a document to a personal email address. It is unusual, these days, to find a professional, managerial, or high level sales employee who does not have electronic copies of confidential business information on a home computer or smart phone. A company that claims to be wronged by the unauthorized dissemination of its confidential business information will not have a very strong legal position if it failed to limit the use or control the handling of confidential data, or failed to monitor compliance with relevant policies.

The solution to this problem is not the same for every employer. Achieving the correct balance between confidentiality and efficiency requires a conscious balancing of two conflicting, but important, considerations: the desire to encourage enhanced productivity from employees and the need to carefully protect a company's most sensitive business information.

The good news? There are technologies that can monitor and control the flow of information to and from employees' computers and devices. Training on the correct handling of confidential information can be extremely effective. Consistent enforcement of confidentiality policies will encourage vigilance and discourage casual handling of information. Proper use of carefully drafted employment agreements can significantly improve an employer's legal position. Careful assessment and preventive measures can make a big difference to an employer's ability to protect its proprietary information in this age of electronic communication.