



Information Confidentiality When Staff Leave The Company

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ABSTRACT:

When an employee leaves the company, regardless of the circumstances, there must be an appropriate termination process that ensures the legal rights and interests of both parties, particularly the commitment to confidentiality. This helps prevent employees from disclosing confidential information or trade secrets to competitors or other companies. During their employment, employees have the right to request to leave and terminate their employment contracts. In addition to handing over the work and tools they are responsible for to the company, employees may also be required to commit to confidentiality after leaving the job if the company requests it.

Introduction

Currently, many significant losses and severe damages to businesses are due to the lack of clear regulations regarding information confidentiality when employees leave, leading to improper application and execution of these regulations. Confidentiality is one of the most critical issues for a company's success. However, not all confidentiality regulations within businesses are clearly articulated. Consequently, inadequate and uncertain confidentiality measures can create complex and troublesome issues in the employer-employee relationship. So, what are the regulations on confidentiality in businesses in Vietnam?

First, it should be noted that there are no clear regulations on information confidentiality in the Labor Code. Instead, businesses must develop their own based on their specific situations and operational principles. This has led to many headaches for companies regarding confidentiality, especially when employees leave. Although work-related information should ideally be deleted from the employee's personal devices before they leave, businesses cannot ensure that employees have not copied the information beforehand. Even without physical copies, sensitive information might not require extensive storage—merely memorizing a small portion and releasing it could potentially bring down an entire company. A prime example is the secret formula for Coca-Cola, which has remained confidential for over a hundred years since its production began.

Accordingly, employees may use various methods to leak information or, worse, provide it to competitors in the market. The methods used to maintain information confidentiality in businesses in Vietnam typically fall into three categories:

- Including confidentiality clauses in one or more provisions of the employment contract.
- Documenting confidentiality agreements as separate written agreements distinct from the employment contract.
- Incorporating confidentiality policies within the company's internal labor regulations.

Regulations on Information confidentiality that businesses need to know

Firstly, in principle, the labor contract only regulates the relationships that arise while the employee is working for you. This means that when the employee signs a labor contract to work for your company, a labor relationship is established between your company and that employee. In this case, all rights, obligations, and responsibilities of the employee towards your company will comply with the provisions of labor law, internal management regulations of the company, labor regulations, and collective labor agreements (if any).

Article 23, Clause 2 of the 2012 Labor Code stipulates: When the employee is directly involved in business secrets, technological secrets as regulated by law, the employer has the right to negotiate in writing with the employee about the content, duration of protection of business secrets, technological secrets, rights, and compensation in case of employee violations.

However, when the employee no longer works for your company, meaning the labor contract has been terminated, it also means the termination of the labor relationship between your company and that employee. At this point, the relationship between the parties, if established, will be purely civil and governed by civil law.

Therefore, to control and bind the responsibility of employees to protect the company's business secrets after they no longer work for the company, the company must sign a commitment to information confidentiality with them. This commitment stipulates that these individuals must still absolutely protect the company's business technological secrets even after they no longer work for the company and specifies a level of compensation for damages if they engage in misconduct. This commitment is considered a civil agreement and binds the responsibility of those employees under civil law.

Secondly, the commitment to information confidentiality is an agreement not to disclose information between the information owner (the company) and the information recipient (the employee). The commitment to information confidentiality imposes certain obligations to ensure the confidentiality of the information is maximally secured. This is considered a measure to prevent unauthorized intrusion from outside into the internal system, minimizing the risk of information theft, which can lead to extremely serious consequences for individuals and companies.

Procedures for implementing information confidentiality for employees

The advancement of technology has made commercial transaction secrets vulnerable to theft by departing employees. They may send customer contact information to their phones, email marketing plans, email addresses, or convert it into personal data. We need to implement specific measures such as signing confidentiality agreements to sanction information leakage behavior, as specified below:

Firstly, Timing of Signing Confidentiality Commitments

The 2019 Labor Code stipulates: "When employees are directly involved in business secrets, technological secrets as regulated by law, employers have the right to negotiate in writing with employees about the content, duration of protection of business secrets, technological secrets, rights, and compensation in case of employee violations" (Clause 2, Article 21).

As per the norm, the commitment to information confidentiality after the employee leaves the company is signed before the employee starts working at the company. All issues related to the scope, method, timing of information confidentiality, and obligations to compensate for failure to adhere to the agreed-upon content are addressed.

After the employee leaves, the company needs to pay attention to revoking access rights and retrieving internal company accounts assigned to the employee. Furthermore, the employee should be requested to sign a commitment to information confidentiality after leaving to prevent them from disclosing business secrets to competitors or other companies. The company can enumerate the tasks the employee is directly involved in that relate to the company's confidential information and business secrets. The enterprise and the employee can agree to sign an information confidentiality contract or a commitment to information confidentiality.

Secondly, Content of Commitment

To ensure the scope of the commitment to information confidentiality is stringent, the company may consider the following options:

Firstly, if the company's articles of association, labor regulations, collective labor agreements, or other regulations and agreements have provisions on the concept of "business secrets", the company can refer to those documents.

Secondly, if the above-mentioned documents do not define what constitutes "business secrets", then reference may be made to the Intellectual Property Law of 2005, as amended and supplemented in 2009, to specify the concept of "business secrets" in this case: "23. Business secrets are information obtained from financial investment activities, intellectual property, not disclosed and capable of being used in business" (Clause 23, Article 4).

Determine a reasonable time frame for requesting a commitment to information confidentiality: The law does not limit the time frame for committing to information confidentiality. Therefore, the enterprise needs to assess each specific case to determine an appropriate time frame for requesting information confidentiality.

The right to notify third parties about the commitment to information confidentiality: To ensure the strictness of the commitment, the employee's awareness, and the company's proactive stance in protection methods, the company may consider stipulating that employees agree to allow the company to notify third parties about the commitment to information confidentiality after leaving employment between the employee and the company.

Discussing, proposing solutions and policies to information confidentiality when employees leave their job

Specific solution:

To limit the risk of information not being secured, we need to delve into the causes and constraints to understand how to comprehensively address them. Below are specific ways to help businesses implement solutions and policies to secure information from employees who are about to leave their positions:

- Monitor unusual email and computer access.
- Conduct interviews and asset audits before finalizing departure procedures.
- Obtain commitments to return assets.
- Remind of the obligation to secure information.

Terminate computer access and accounts immediately upon employee departure. Throughout the handover process, HR should inquire about the reasons for their departure. If an employee is transitioning to a competitor, their computer should be reviewed before any potential information theft occurs; it's advisable to capture screenshots of their account data. The company can also utilize programs that prevent data deletion and generate reports on all user activities within the last 60 days or similar. For instance, if a departing employee sends a customer list to a personal account and attempts to delete activity history, this information will be reported to HR.

Exchange, Propose Methods:

- New Employees Joining the Company:

Establish robust onboarding policies and procedures for new employees, and have them sign confidentiality agreements. Monitor their access from any provided devices.

- Remind Employees nearing Contract End:

When employees are about to leave, the company should review the agreements they have signed during their tenure. A conversation with them provides an opportunity to emphasize the company's data security obligations and policies even after their collaboration ends. Discuss in detail the process of transferring access rights to all confidential information, including data stored on personal devices and other digital spaces like cloud storage, external email, social media, and devices outside the company. Conduct an inventory of assets provided to remote workers.

- Take a Broader Perspective:

Employees may not always distinguish between their own property and that of the company. Companies should recognize that internal espionage is a widespread issue. Furthermore, when employees are preparing to leave, their new company may request information from their previous employer, or the individual may want to use information gathered from the previous company to excel in their new role.

Recommendation:

When an employee leaves the company, regardless of the circumstances, there must be an appropriate termination process that ensures the legal rights and interests of both parties, particularly the commitment to confidentiality. This helps limit the disclosure of confidential information, trade secrets to competitors, or other companies. The company should also take preventive measures to effectively prevent information from leaking outside, thus avoiding potential damages..

References

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- Civil Procedure Code of 2015
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