



Trade Secret Laws: New Jersey

*James P. Flynn and Amy E. Hatcher,
Epstein, Becker & Green, P.C.*

This Article is published by Practical Law Company on
its ^{PLC}Labor & Employment web service at
<http://us.practicallaw.com/9-506-4068>.

A Q&A guide to state law on trade secrets and confidentiality for private employers in New Jersey. This Q&A addresses the state-specific definitions of trade secrets and the legal requirements relating to protecting them. Federal, local or municipal law may impose additional or different requirements.

OVERVIEW OF STATE TRADE SECRET LAW

1. List the laws (statutes and regulations) by name and code number, both criminal and civil, that your state has adopted governing trade secrets.

New Jersey has not adopted a version of the model Uniform Trade Secrets Act. Instead, New Jersey relies on common law trade secret protection.

New Jersey's Computer Related Offenses Act (CROA), provides civil remedies for wrongful actions that may affect trade secrets contained in:

- Data.
- A database.

- A computer.
- A computer program.
- A computer system.
- A computer network.
- Computer software.
- Computer equipment.

(*N.J. Stat. Ann. §§ 2A:38A-1 to 2A:38A-6 (2011)*.)

Under the CROA, some of the wrongful actions include unauthorized:

- Altering.
- Damaging.
- Taking.
- Accessing.
- Attempting to access.
- Destruction.

(*N.J. Stat. Ann. §§ 2A:38A-3 (2011)*.)

The New Jersey Open Public Records Act exempts trade secrets from the definition of government records that must be disclosed to the public (*N.J. Stat. Ann. § 47:1A-1.1 (2011)*; *Gill v. N.J. Dept. of Banking & Ins.*, 960 A.2d 397 (N.J. Super. Ct. App. Div. 2008)). The statute also prohibits government agencies from disclosing biotechnology trade secrets or related confidential information, except as allowed under federal law (*N.J. Stat. Ann. § 47:1A-1.2 (2011)*).

Trade secrets may also be protected by New Jersey's criminal statute, which addresses both theft and computer-related criminal activity (*N.J. Stat. Ann. §§ 2C:20-1(i) (2011)*; *2C:20-3 (2011)*; *2C:20-23 to 2C:20-34 (2011)*).

2. Has your state adopted the model Uniform Trade Secrets Act (UTSA)? If so, please:

- Identify which among the statutes listed in response to *Question 1* is your state's adopted version of the UTSA.
- Describe any significant differences between your state's adopted version and the model UTSA.

ADOPTED VERSION OF MODEL UTSA

New Jersey has not adopted the Uniform Trade Secrets Act (UTSA). New Jersey instead relies on common law trade secret protection (*Ahlert v. Hasbro, Inc.*, 325 F. Supp. 2d 509 (D.N.J. 2004)).

A bill with a modified version of the UTSA has received favorable committee reports and even passed the New Jersey General Assembly in November 2010. However, the bill has never reached a floor vote in the New Jersey Senate.

3. List any common law protections afforded to trade secrets. If common law protections are afforded to trade secrets, are they preempted by available state statutes?

New Jersey courts analyze trade secret misappropriation under the Third Restatement of Unfair Competition's confidentiality principles (*Expeditors Int'l of Wash., Inc. v. Direct Line Cargo Mgmt. Servs., Inc.*, 995 F. Supp. 468 (D.N.J. 1998)). New Jersey courts have also referenced the Restatement of Torts's trade secret definition and its six-factor trade secret analysis (*Hammock ex rel. Hammock v. Hoffman LaRoche, Inc.*, 662 A.2d 546 (N.J. 1995)).

The Restatement of Torts's six factors include:

- The extent to which the information is known outside of the business.
- The extent to which it is known by employees and others in the business.
- The extent of the owner's measures to guard the information's secrecy.
- The information's value to the owner and to his competitors.
- The amount of effort or money used to develop the information.
- How easy or difficult it would be for others to properly acquire or duplicate the information.

(*Restatement of Torts* § 757 cmt. b (1939).)

Under the common law duty of confidence a person cannot disclose a trade secret when:

- The person knew or had reason to know that the discourse was intended to be in confidence.
- The other party to the disclosure reasonably inferred that the person consented to an obligation of confidentiality.

(*Restatement (Third) of Unfair Competition* § 41(b) (1995).)

Competitors owe no duty of loyalty or confidence to a trade secret owner. However, a competitor may be liable for trade secret misappropriation if he acquires it with knowledge of a former employee's breach of confidence. (*Rohm & Haas Co. v. Adco Chem. Co.*, 689 F.2d 424 (3d Cir. 1982).)

New Jersey law permits employers to use restrictive covenants to guard against misappropriation of company information by current and former employees. New Jersey courts require these agreements to be reasonable. (*Ingersoll-Rand Co. v. Ciavatta*, 542 A.2d 879 (N.J. 1988).)

Employers may also use restrictive covenants to guard against misappropriation of company information that does not meet the definition of a trade secret (*Lamorte Burns & Co. v. Walters*, 770 A.2d 1158 (N.J. 2001)).

Confidential and proprietary business information may also be protectable even without an express agreement. In *Lamorte Burns & Co. v. Walters*, two employees breached their duty of loyalty by stealing protected information that they intended to use to compete with their former employer after resigning.

DEFINITION OF TRADE SECRET

4. How does your state define a trade secret under each law identified in *Question 1* (statute or regulation) and *Question 3* (common law)?

COMMON LAW

New Jersey courts use the 1939 Restatement of Torts's trade secret definition, under which a trade secret is any:

- Formula.
- Pattern.
- Device.
- Compilation of information.

(*Restatement of Torts* § 757 cmt. b (1939); *Ahlert v. Hasbro, Inc.*, 325 F. Supp. 2d 509 (D.N.J. 2004).)

To be protected as a trade secret, information must:

- Be used in business.
- Give the owner an opportunity to obtain an advantage over competitors who do not know or use it.

(*Restatement of Torts* § 757 cmt. b (1939); *Ahlert v. Hasbro, Inc.*, 325 F. Supp. 2d 509 (D.N.J. 2004).)

CRIMINAL STATUTE

The New Jersey Criminal Code requires trade secret information to be both secret and valuable. The Code defines a trade secret as

the whole, any portion or phase of any:

- Scientific or technical information.
- Design.
- Process.
- Procedure.
- Formula.
- Improvement.

(*N.J. Stat. Ann. § 2C:20-1(i) (2011)*).

A trade secret is presumed to be secret when the owner takes measures to prevent it from becoming available to unauthorized persons (*N.J. Stat. Ann. § 2C:20-1(i) (2011)*).

5. Describe any significant cases in your state creating, modifying or clarifying the definition of a trade secret.

A trade secret's subject matter cannot be public knowledge or general knowledge within the relevant industry. However, even if a set of ingredients are generally known to an industry, there may still be protection if the combination method is secret. (*Sun Dial Corp. v. Rideout*, 108 A.2d 442 (N.J. 1954).)

In *Sun Dial Corp. v. Rideout*, the court restrained the defendant corporation from using or disclosing a secret process that was learned in confidence by the individual defendants who were former employees.

New product ideas and marketing materials are not trade secrets because they are not in the Restatement's trade secret definition (*Johnson v. Benjamin Moore & Co.*, 788 A.2d 906 (N.J. Super. Ct. App. Div. 2002)). In *Benjamin Moore & Co.*, an inventor sued a paint company for trade secret misappropriation when the company developed a new product following the inventor's presentation of his do-it-yourself art mural idea. The court held that the plaintiff's product idea and marketing materials were not trade secrets.

For more examples, see *Questions 6 and 7*.

6. What are examples of information that courts in your state:

- Have found to be trade secrets?
- Have found not to be trade secrets?
- Have found not to be trade secrets as a matter of law?

TRADE SECRETS

The following types of information may be protected as trade secrets:

- Scientific data, such as:
 - chemical processes and manufacturing methods (*Sun Dial Corp. v. Rideout*, 108 A.2d 442 (N.J. 1954));
 - machines and devices (*Adolph Gottscho, Inc. v. Am. Marking Corp.*, 114 A.2d 438 (N.J. 1955)); and
 - a manufacturing process (*Rohm & Haas Co. v. Adco Chem. Co.*, 689 F.2d 424 (3d Cir. 1982)).
- Business information, such as:
 - a code for determining discounts, rebates or other concessions in a price list or catalogue, and bookkeeping methods if the business continuously uses the information (*Boost Co. v. Faunce*, 80 A.2d 246 (N.J. Super. Ct. Ch. Div. 1951));
 - an accounting firm's internal audit manuals (*Mid Am. Waste Sys., Inc. Sec. Litig. v. Coopers & Lybrand*, 1997 WL 1045729 (D.N.J. Dec. 10, 1997));
 - customer or client lists and information (*AYR Composition, Inc. v. Rosenberg*, 619 A.2d 592 (N.J. Super. Ct. App. Div. 1993)) (see *Question 7*);
 - computer programs (*Expeditors Int'l of Wash., Inc. v. Direct Line Cargo Mgmt. Servs., Inc.*, 995 F. Supp. 468 (D.N.J. 1998)); and
 - financial information, customer data, merchandise information and vendor information (*P.C. of Yonkers, Inc. v. Celebrations! The Party & Seasonal Superstore, LLC*, 2007 WL 708978 (D.N.J. Mar. 5, 2007)).

NOT TRADE SECRETS

The following information has been found not to be a trade secret:

- Skills, expertise and general knowledge of an employee (*Ingersoll-Rand Co. v. Ciavatta*, 542 A.2d 879 (N.J. 1988)).
- General knowledge of a firm's inner workings (*Laidlaw, Inc. v. Student Transp. of Am., Inc.*, 20 F. Supp. 2d 727 (D.N.J. 1998)).

NOT TRADE SECRETS AS A MATTER OF LAW

The following have been found not to be trade secrets as a matter of law:

- Idea submissions, where the plaintiff cannot show "use in business" of the product (*Ahlert v. Hasbro, Inc.* 325 F. Supp. 2d 509 (D.N.J. 2004)).

- New product ideas (*Johnson v. Benjamin Moore & Co.*, 788 A.2d 906 (N.J. Super. Ct. App. Div. 2002)).
- Marketing concepts (*Johnson v. Benjamin Moore & Co.*, 788 A.2d 906 (N.J. Super. Ct. App. Div. 2002)).

7. To what extent have:

- Customer, client or subscriber lists been given trade secret protection?
- Former employees been enjoined from using former employer's customer information?

CUSTOMER LISTS CAN BE PROTECTED AS TRADE SECRETS

New Jersey courts have held that confidential customer lists may be protected from use or disclosure by current or former employees (*AYR Composition, Inc. v. Rosenberg*, 619 A.2d 592 (N.J. Super. Ct. App. Div. 1993)).

However, when employees take personal contacts from job to job, employers do not have a protectable interest in those relationships (*Coskey's TV & Radio Sales & Serv., Inc. v. Foti*, 602 A.2d 789 (N.J. Super. Ct. App. Div. 1992)). Similarly, if customers are known in an industry or are easily discernable, employers do not have a protectable interest (*Nat'l Tile Bd. Corp. v. Panelboard Mfg. Co.*, 99 A.2d 440 (N.J. Super. Ct. Ch. Div. 1953)).

SCOPE OF INJUNCTION ENJOINING USE OF FORMER EMPLOYER'S CUSTOMER LIST

In *Coskey's TV & Radio Sales & Serv., Inc. v. Foti*, an employer sued its former employee for breach of a restrictive covenant. The preliminary injunction restricted the former employee from contacting any of the customers he had worked with during his employment, including those he had known before being hired.

On appeal, the *Coskey's TV & Radio Sales & Serv., Inc. v. Foti* court balanced the employer's protectable interest against the former employee's hardship. Given the former employee's extreme financial hardship and the limited benefit for the employer, the court substantially vacated the injunction.

The decision held that the former employee should be allowed to pursue:

- Successful contracts he had negotiated for the employer.
- Outstanding bids he participated in.
- The employer's relationships with particular customers where the employer helped provide the contact.

REASONABLE EFFORTS TO MAINTAIN SECRECY

8. What efforts to maintain secrecy have been deemed reasonable or sufficient for trade secret protection:

- By courts in your state?
- By statutes or regulations in your state?

COURTS

Generally, a company takes reasonable steps to protect information as trade secrets where it limits access to its trade secrets and premises through signage and security measures. Some examples of reasonable steps include:

- Keeping information locked up (*P.C. of Yonkers, Inc. v. Celebrations! The Party & Seasonal Superstore, LLC*, 2007 WL 708978 (D.N.J. Mar. 5, 2007)).
- Publications on the information are deliberately ambiguous (*Sun Dial v. Rideout*, 102 A.2d 90 (N.J. Super. Ct. App. Div. 1954)).
- Visitors must sign a register and agree not to divulge their observations (*Sun Dial v. Rideout*, 102 A.2d at 95).
- Employees are told that the information is secret (*Sun Dial v. Rideout*, 102 A.2d at 96).
- Information is limited to select employees (*Sun Dial v. Rideout*, 102 A.2d at 94).
- Information is not available to competitors or the public and is learned in confidence by the employees (*Sun Dial v. Rideout*, 108 A.2d 442 (N.J. 1954)).

Without explicitly stating that a manufacturing company failed to make reasonable efforts, the company's machines were held not to be trade secrets where:

- The employees did not have employment contracts.
- The defendant employees did not have jobs the court could characterize as confidential.
- The employees were not required to promise to keep the information secret to either learn about or use the machines.
- Every employee could access the entire factory.
- Every employee could observe the machinery's operation.
- It was uncertain whether the restrictions on outsiders entering the factory were enforced.

(*Nat'l Tile Board Corp. v. Panelboard Mfg. Co.*, 99 A.2d 440 (N.J. Super. Ct. Ch. Div. 1953)).

A court does not automatically terminate an employer's pre-existing cause of action against a former employee, even if some of the employer's trade secrets are disclosed in patents that are issued after the defendant employee misappropriated the information (*Adolph Gottscho, Inc. v. Am. Marking Corp.*, 114 A.2d 438 (N.J. 1955)).

STATUTES OR REGULATIONS

There are no statutes or regulations addressing what are considered reasonable steps to maintain secrecy of a trade secret.

TRADE SECRET MISAPPROPRIATION CLAIMS

9. For any law identified in *Question 1* (statutes or regulations) or *Question 3* (common law), what must a plaintiff show to prove trade secret misappropriation?

COMMON LAW

Under New Jersey common law, to prove trade secret misappropriation a plaintiff must show each of the following:

- A trade secret exists (see *Question 4*).
- The information was communicated in confidence by the plaintiff to the employee.
- The secret information was disclosed by the employee and in breach of that confidence.
- The secret information was acquired by a competitor with knowledge of the employee's breach of confidence.
- The secret information was used by the competitor to the plaintiff's detriment.
- The plaintiff took precautions to maintain the secrecy of the trade secret (see *Question 8*).

(*Rycoline Prods., Inc. v. Walsh*, 756 A.2d 1047 (N.J. Super. Ct. App. Div. 2000).)

Under *Rycoline Prods., Inc. v. Walsh*, a trade secret owner is not required to show that a competitor used the secret information to make a product that is identical to the trade secret product.

10. Can corporations, corporate officers and employees of a competing company in possession of the trade secrets of others be held liable for misappropriation in your state? If so, under what circumstances?

A plaintiff may allege trade secret misappropriation claims against corporations, corporate officers and employees of a competing company (*Rycoline Prods., Inc. v. Walsh*, 756 A.2d 1047 (N.J. Super. Ct. App. Div. 2000); *Rohm & Haas Co. v. Adco Chem. Co.*, 689 F.2d 424 (3d Cir. 1982)).

Under *Rycoline Prods., Inc. v. Walsh*, to prove trade secret misappropriation against these parties a plaintiff must show each of the following:

- A trade secret exists (see *Question 4*).
- The information was communicated in confidence by the plaintiff to the employee.

- The secret information was disclosed by the employee and in breach of that confidence.
- The secret information was acquired by a competitor with knowledge of the employee's breach of confidence.
- The secret information was used by the competitor to the plaintiff's detriment.
- The plaintiff took precautions to maintain the secrecy of the trade secret (see *Question 8*).

DEFENSES

11. For any law identified in *Question 1* (statutes and regulations) or *Question 3* (common law), what defenses are available to defend against claims under the statute or common law?

COMMON LAW

Defenses to a misappropriation of trade secrets claim include:

- The information is not a trade secret or otherwise protectable.
- There was no misappropriation.
- The statute of limitations has expired.
- The trade secret owner failed to take action to protect its trade secrets.
- Lack of standing to sue.
- Equitable defenses, such as:
 - estoppel;
 - laches (*Fox v. Millman*, 2010 WL 5426782 (N.J. Super. Ct. App. Div. Jul. 15, 2010));
 - waiver; and
 - unclean hands.

CRIMINAL STATUTE

In New Jersey, a criminal defendant has an affirmative defense to a trade secret theft prosecution if he either:

- Was unaware that the property belonged to another.
- Acted under an honest claim of right to the property or that he had a right to acquire or dispose of it as he did.

(N.J. Stat. Ann. § 2C:20-2(c) (2011).)

STATUTE OF LIMITATIONS

12. For any law identified in *Question 1* (statutes and regulations) or *Question 3* (common law), please identify the relevant statute of limitations for bringing a claim.

COMMON LAW

New Jersey imposes a six-year statute of limitations for common law trade secret misappropriation, duty of loyalty and contract claims (*N.J. Stat. Ann. § 2A:14-1 (2011)*).

In New Jersey, a trade secrets misappropriation claim accrues when the plaintiff knew or should have known of the injury giving rise to his claim (*Blystra v. Fiber Tech Group, Inc.*, 407 F. Supp. 2d 636 (D.N.J. 2005)).

CRIMINAL STATUTE

New Jersey imposes a five-year statute of limitations on prosecutions for a trade secret misappropriation (*N.J. Stat. Ann. § 2C:1-6 (2011)*).

OTHER RELATED CLAIMS

13. What other claims, statutory or common law, can a plaintiff bring in your state against a defendant in the event of wrongful acquisition, misuse or disclosure of a trade secret?

Under New Jersey common law for wrongful acquisition, misuse or disclosure of a trade secret, a plaintiff may bring the following claims:

- Breach of duty of loyalty.
- Tortious interference.
- Unfair competition.

(*Lamorte Burns & Co. v. Walters*, 770 A.2d 1158 (N.J. 2001)).

Plaintiffs may allege both common law trade secret misappropriation and a claim under New Jersey's Computer Related Offenses Act (CROA) (*N.J. Stat. Ann. § 2A:38A-3(a) (2011)*). The CROA protects computer related sources, which may contain trade secrets. A computer database containing financial, merchandise, customer and vendor information was a trade secret when it was:

- Compiled through and for use in the plaintiffs' business.
- Stored for the plaintiffs' exclusive use.
- Protected from dissemination to the general public.

(*P.C. of Yonkers, Inc. v. Celebrations! The Party & Seasonal Superstore, LLC*, 2007 WL 708978 (D.N.J. Mar. 5, 2007)).

REMEDIES

14. For any law identified in *Question 1* (statutes and regulations) and *Question 3* (common law), please describe the potential relief available to plaintiffs.

COMMON LAW

In New Jersey, for common law trade secret misappropriation a plaintiff may be entitled to:

- Injunctive relief (*Raven v. A. Klein & Co.*, 478 A.2d 1208 (N.J. Super. Ct. App. Div. 1984)).
- Damages (*Platinum Mgmt., Inc. v. Dahms*, 666 A.2d 1028 (N.J. Super. Ct. Law Div. 1995)).
- Punitive damages (*Lamorte Burns & Co. v. Walters*, 770 A.2d 1158 (N.J. 2001)).

The damages for misappropriation of trade secrets may be measured by either:

- The plaintiff's losses.
- The profits unjustly received by the defendant.

(*Shamrock Techs., Inc. v. Med. Sterilization, Inc.*, 6 F.3d 788 (Fed. Cir. 1993)).

STATUTES AND REGULATIONS

In New Jersey, recovery of punitive damages in a trade secret case is governed by the Punitive Damages Act (PDA) (*N.J. Stat. Ann. §§ 2A:15-5.9 to 2A:15-5.17 (2011)*).

To recover punitive damages under the PDA, a plaintiff must prove that the harm was caused by the defendant's acts or omissions and the acts or omissions were either:

- Motivated by actual malice.
- Accompanied by a wanton and willful disregard of persons who might foreseeably be harmed.

(*N.J. Stat. Ann. § 2A:15-5.12(a) (2011)*).

In determining whether punitive damages are appropriate under the PDA, a court should consider all relevant evidence, including but not limited, to:

- The likelihood, at the relevant time, that serious harm would arise from the defendant's conduct.
- The defendant's awareness or reckless disregard of the likelihood that such serious harm would arise from his conduct.
- The defendant's conduct on learning that his initial conduct would likely cause harm.
- The duration of the defendant's conduct or whether there was any concealment of that conduct.

(*N.J. Stat. Ann. § 2A:15-5.12(b) (2011)*).



For violations of New Jersey's civil Computer Related Offenses Act, a plaintiff may obtain:

- Compensatory damages.
- Punitive damages.
- Attorneys' fees.
- An injunction.
- Investigation and litigation costs.

(*N.J. Stat. Ann. §§ 2A:38A-3, 2A:38A-5 (2011).*)

Those found guilty under New Jersey's theft and criminal computer-related theft statutes may be imprisoned (*N.J. Stat. Ann. §§2C:20-2 (2011); 2C:20-25 (2011); 2C:20-31 (2011); 2C:43-6 (2011).*)

CONTRACTUAL PROTECTIONS

15. What factors do courts in your state consider when assessing the enforceability of a non-disclosure or confidentiality agreement?

Non-disclosure agreements aimed at preventing a former employee's disclosure of trade secrets and confidential information are enforceable only if they are reasonable (*Raven v. A. Klein & Co., 478 A.2d 1208 (N.J. Super. Ct. App. Div. 1984).*)

Generally, New Jersey courts narrowly construe covenants not to compete as a restraint of trade (*J.H. Renarde, Inc. v. Sims, 711 A.2d 410 (N.J. Super. Ct. Ch. Div. 1998).*) However, New Jersey courts enforce covenants not to compete if they are reasonable in scope and duration (*Cnty. Hosp. Group, Inc. v. More, 869 A.2d 884 (N.J. 2005).*)

Community Hospital Group, Inc. v. More explains that courts use a three-part test to determine whether a non-compete agreement is reasonable and therefore enforceable. The court must determine whether the restrictive covenant:

- **Is necessary to protect the employer's legitimate interests in enforcement.** An employer's legitimate interests include protecting:
 - customer relationships;
 - trade secrets; and
 - confidential business information.

(*Coskey's TV & Radio Sales & Servs., Inc. v. Foti, 602 A.2d 789 (N.J. Super. Ct. App. Div. 1992).*)

In restrictive covenants for physicians, an employer's legitimate interests may include protecting patient lists, patient referral bases and investment in a physician's training. However, legitimate business interests do not include restricting competition (*Cnty. Hosp. Group, Inc. v. More, 869 A.2d 884 (N.J. 2005).*)

- **Would cause undue hardship to the employee.** The court must determine:
 - the likelihood the employee can find other work in his field; and
 - the burden the restriction places on the employee.

(*Pathfinder, L.L.C. v. Luck, 2005 WL 1206848 (D.N.J. May 20, 2005).*)

However, *Pathfinder, L.L.C. v. Luck* notes if an employee resigns, courts are less likely to find undue hardship because the employee triggered the restriction.

- **Would injure the public.** *Coskey's Television & Radio Sales & Service, Inc. v. Foti* shows that New Jersey courts balance the public's right to access the advice of professionals licensed by the state, against the employer's legitimate patient or client relationships.

Sufficient consideration to support a non-compete covenant may include:

- An offer of employment.
- A promise of continued employment.
- A change in the terms or conditions of employment.

(*Hogan v. Bergen Brunswick Corp., 378 A.2d 1164 (N.J. Super. Ct. App. Div. 1977).*)

New Jersey courts may modify or blue-pencil an overbroad non-compete covenant, permitting total or partial enforcement to the extent reasonable under the circumstances (*Solari Indus., Inc. v. Malady, 264 A.2d 53 (N.J. 1970).*)

Community Hospital Group, Inc. v. More also states that depending on the court's analysis, a restrictive covenant may be disregarded, partially enforced or completely enforced to the extent reasonable under the circumstances.

For more information on restrictive covenants in New Jersey, see *State Q&A, Non-compete Laws: New Jersey* (www.practicallaw.com/1-505-9155).

MISCELLANEOUS

16. What common law duties are recognized in your state that prohibit employees from disclosing employer information even absent an independent contractual obligation?

New Jersey employees owe a duty of loyalty to current and former employers, prohibiting improper acquisition, misuse or disclosure of trade secrets acquired during their employment (*Sun Dial Corp. v. Rideout, 108 A.2d 442 (N.J. 1954); Auxton Computer Enters. v. Parker, 416 A.2d 952 (N.J. Super. Ct. App. Div. 1980).*)

17. Does your state recognize the doctrine of inevitable disclosure?

New Jersey courts have applied the doctrine of inevitable disclosure. A court may grant injunctive relief to prevent disclosure if both:

- An employee with access to his former employer's trade secrets takes a new job similar to his previous one.
- There is sufficient likelihood of inevitable disclosure.

(*Nat'l Starch & Chem. Corp. v. Parker Chem. Corp.*, 530 A.2d 31 (N.J. Super. Ct. App. Div. 1987).)

For general information on the inevitable disclosure doctrine, see *Practice Note, Non-compete Agreements with Employees: Protection in the Absence of Non-competes: Inevitable Disclosure* (www.practicallaw.com/7-501-3409).

18. What, if anything, have courts held regarding trade secret misappropriation claims involving memorizing trade secrets rather than the taking of tangible representations of information?

For trade secret misappropriation purposes, New Jersey courts have not addressed whether information memorization is treated differently than taking tangible representations of information.

19. Do any of the laws identified in *Question 1* (statutes and regulations) or *Question 3* (common law) preempt other causes of action a plaintiff could assert related to trade secret misappropriation (for example, conversion, breach of fiduciary duty, unfair competition or tortious interference)?

As New Jersey has not adopted the model Uniform Trade Secrets Act, the common law controls and civil claim preemption by statute is not an issue (see *Question 13*).

Under New Jersey's criminal theft statute (*N.J. Stat. Ann. § 2C:20-1(i) (2011)*), wrongdoers may be criminally prosecuted and sued civilly for trade secret misappropriation or related claims under the common law (see *Question 1*).

Practical Law Company provides practical legal know-how for law firms, law departments and law schools. Our online resources help lawyers practice efficiently, get up to speed quickly and spend more time on the work that matters most. This Article is just one example of the many transactional resources Practical Law Company offers. Discover for yourself what the world's leading law firms and law departments use to enhance their practices.

Contact Us

PRACTICAL LAW COMPANY®



Practical Law Company
747 Third Avenue, 36th Floor
New York, NY 10017
646.562.3405
plcinfo@practicallaw.com
www.practicallaw.com