Trade Secret Laws: Massachusetts

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A Q&A guide to state law on trade secrets and confidentiality for private employers in Massachusetts. 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. Answers to questions can be compared across a number of jurisdictions (see Trade Secret Laws: State Q&A Tool).

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.

Massachusetts has not adopted a version of the model Uniform Trade Secrets Act. Instead, trade secrets are protected by a blend of statutory and common law.

Under the Massachusetts statutes regulating trade secrets, a defendant may be held liable for certain acts towards another person or corporation's trade secret including:

- Embezzlement.
- Stealing.
- Unlawful taking.
- Concealment.
- Copying.
- Using fraud or deception to obtain it.

(M.G.L. ch. 93, § 42.)

To remedy these acts, Massachusetts courts may double the amount of damages found at trial (M.G.L. ch. 93, § 42). A trade secret owner may also obtain injunctive relief (M.G.L. ch. 93, § 42A).

Trade secret misappropriation may also be remedied under the Massachusetts Consumer Protection Act addressing unfair trade practices (M.G.L. ch. 93A, §§ 1 to 11). Various forms of relief are available under the unfair trade practices law including:

- Injunctive relief.
- Double or triple damages.
- Attorneys' fees.
- Costs.

(M.G.L. ch. 93A, § 9.)

Massachusetts also has a criminal statute to punish trade secret misappropriation (M.G.L. ch. 266, § 30(4)).

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

Massachusetts has not adopted the model Uniform Trade Secrets Act. Instead, trade secrets are protected by a combination of statutory and common law (see Question 1).

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?

In Massachusetts trade secrets cases, Massachusetts courts use the Restatement of Torts' six-factor test, which includes:

- The extent to which the information is known outside of the business.

- The extent to which the information is known by employees and others involved in the business.
- The extent of the employer's measures to guard the information's secrecy.
- The information's value to the employer and his competitors.
- The amount of effort or money the employer spent to develop the information.
- The ease or difficulty for others to properly acquire or duplicate the information.

(*Jet Spray Cooler, Inc. v. Crampton*, 282 N.E.2d 921, 925 (Mass. 1972).)

Employers must take reasonable steps to prevent the public and unauthorized employees from learning information they seek to protect. Massachusetts courts also evaluate whether an employer informs its employees that the information is a trade secret and must be kept confidential. (*Jet Spray Cooler, Inc.*, 282 N.E.2d at 925.)

In Massachusetts, certain types of information are not protectable as trade secrets. For example, mere possibilities or goals are not protectable, in contrast to the means for achieving a goal (*Chomerics, Inc. v. Ehrreich*, 421 N.E.2d 453, 457-58 (Mass. App. Ct. 1981)).

Further, general business information and routine company data are not normally protectable as trade secrets (*Me. Pointe, LLC v. Starr*, 2011 WL 379279, at *3 (D. Mass. Feb. 3, 2011)).

However, a plaintiff may still be entitled to relief against those who improperly procure business information, even if the information does not qualify as a trade secret (*USM Corp. v. Marson Fastener Corp.*, 393 N.E.2d 895, 903 (Mass. 1979)).

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)?

Trade secrets are defined both by Massachusetts statutes and common law. Both the Massachusetts statutes regulating trade secrets and the criminal code use the same definition of trade secret (M.G.L. ch. 93, §§ 42 to 42A; M.G.L. ch. 266, § 30(4)).

The Massachusetts criminal code defines a trade secret to include anything that:

- Is secret and:
  - tangible;
  - intangible; or
  - electronically kept or stored.
- Constitutes, represents, evidences, or records:
  - scientific information;
  - technical information;
  - merchandising information;
  - production information;
  - management information;
  - a design;
  - a process;
  - a procedure;
  - a formula;
  - an invention; or
  - an improvement.

(M.G.L. ch. 266, § 30(4).)

Massachusetts common law defines a trade secret as information that:

- Is secret.
- Is used in one's business.
- Gives the owner an opportunity to obtain an advantage over competitors who do not know or use the secret.

(*J.T. Healy & Son, Inc. v. James A. Murphy & Son, Inc.*, 260 N.E.2d 723, 729 (Mass. 1970).)

The Massachusetts Consumer Protection Act covering unfair competition and unfair trade practices does not specifically define the term trade secret (M.G.L. ch. 93A, § 2). However, the act provides that courts analyzing these actions should refer to the federal courts and the Federal Trade Commission's interpretations of the Federal Trade Commission Act (M.G.L. ch. 93A, § 2(b)).

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

In Massachusetts trade secrets cases, each case depends on the parties' conduct and the nature of the information. Massachusetts courts refer to the Restatement of Torts' six factors (*Jet Spray Cooler, Inc.*, 282 N.E.2d at 925; see Question 3).

Plaintiffs seeking to protect information must take all reasonable steps to keep it secret (*J.T. Healy & Son, Inc.*, 260 N.E.2d at 730). However, trade secret owners only need to take reasonable steps and not "heroic measures" to maintain secrecy (*USM Corp.*, 393 N.E.2d at 902).

There is no need for a trade secret to be patentable. Inventors are entitled to:

- Keep their inventions secret by not patenting them.
- Treat their inventions as trade secrets.

(*J.T. Healy & Son, Inc.*, 260 N.E.2d at 730.)

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 are examples of information that courts have found to be trade secrets:

- Manufacturing processes and a price list (*Eastern Marble Prods. Corp. v. Roman Marble, Inc.*, 364 N.E.2d, 799, 802 (Mass. 1977)).
- Financial information, including accounting procedures (*Jillian's Billiard Club of Am., Inc. v. Beloff Billiards, Inc.*, 619 N.E.2d 635, 639 (Mass. Ct. App. 1993)).
- Machinery (*USM Corp.*, 393 N.E.2d at 902-03).

- A cooperative association's membership list with names and addresses (*In re Yankee Milk, Inc.*, 362 N.E.2d 207, 211 (Mass. 1977)).
- Corporate sales strategies, plans for product development, and information about a planned or new product's strengths and weaknesses (*Life Image Inc. v. Brown*, 2011 WL 7443924 (Mass. Super. Ct. Dec. 22, 2011)).

NOT TRADE SECRETS

The following are examples of information that are not trade secrets:

- Information that is public knowledge or general industry knowledge (*J.T. Healy & Son, Inc.*, 260 N.E.2d at 729).
- Information that the owner has failed to take reasonable steps to keep secret (*J.T. Healy & Son, Inc.*, 260 N.E.2d at 730).
- General business information and routine company data (*Me. Pointe, LLC*, 2011 WL 379279 at *3; see Question 3).
- Advertising, marketing, and information relating to parking and decor because this information could be readily acquired or duplicated by observant competitors (*Jillian's Billiard Club of Am., Inc.*, 619 N.E.2d at 638).

NOT TRADE SECRETS AS A MATTER OF LAW

The Massachusetts Supreme Judicial Court held that it could **not** decide the question of whether a list of employees and related information was protectable as a matter of law because a factual inquiry was necessary (*Warner-Lambert Co. v. Execuquest Corp.*, 691 N.E.2d 545, 547-48 (Mass. 1998)).

7. To what extent have:

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

Whether a former employee may use customer information provided by his former employer depends on whether the list is confidential. If the list is confidential, Massachusetts courts then look at whether its use should be prevented, taking into consideration the value of free competition. (*Woolley's Laundry Inc. v. Silva*, 23 N.E.2d 899, 901-02 (Mass. 1939).)

If there is no express employee contract not to use or disclose confidential information learned during employment, a former employee may use general skill or knowledge but may be enjoined from using or disclosing confidential information. Massachusetts courts have applied this rule and reached varying results in customer and supplier list cases depending on the facts. (*Jet Spray Cooler, Inc.*, 282 N.E.2d at 924.)

For example, in *Woolley's Laundry*, a former employee was free to use customer names and addresses learned during his employment after he resigned where:

- The employer failed to impart the information in a confidential manner.
- The employer failed to inform its employees that it intended the information to remain confidential.
- The former employee memorized the information and took no list of names.
- There was no breach of any duty owed to the employer.
- The employer's goods were openly delivered to customers.

(23 N.E.2d at 902-03.)

By contrast, a clothing company's internal business information, including its customers' names, addresses, requirements, and credit standings, supplier identities, designs, and costs were confidential where:

- The company was family-controlled for 49 years.
- The company informed employees of its policy of keeping information secret.
- The information was gathered over many years.
- Supplier identities were secret because of competition.
- Customers only bought new designs from the company.
- Fashion is a highly competitive business and clothing styles vary seasonally.

(*New England Overall Co. v. Woltmann*, 176 N.E.2d 193, 199 (Mass. 1961).)

In *Merrill Lynch, Pierce Fenner & Smith, Inc. v. Dewey*, a former Merrill Lynch employee was required to return Merrill Lynch's client list but was allowed to solicit potential and former clients that he remembered from his earlier employment. The list had to be returned because the former employee acknowledged that it belonged to Merrill Lynch and signed a privacy policy stating that client information would remain confidential. However, the former employee was permitted to contact his former clients because he knew many of them personally and had brought them to Merrill Lynch from a previous firm. (2004 WL 1515502, at *2 (Mass. Super. Ct. Jun. 30, 2004).)

In *In re Yankee Milk*, an agricultural cooperative association could protect the names and addresses of its members as a trade secret and prevent disclosure of them to the Massachusetts Attorney General. The *Yankee Milk* court based its decision on the following factors:

- Disclosure of the names and addresses of the association's milk producing members would allow competitors to solicit them, injuring the association's legitimate competitive interests.
- The list would be difficult to duplicate from independent sources.
- The list was given to officers and employees with an understanding of its confidentiality.

(*In re Yankee Milk, Inc.*, 362 N.E.2d at 211.)

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?
- Statutes or regulations in your state?

COURTS

Massachusetts courts do not protect information as a trade secret if the owner fails to take any reasonable steps to protect its secrecy (*Jet Spray Cooler, Inc.*, 282 N.E.2d at 925).

For example, a clothing company took measures sufficient to protect its internal business information, including its customers' names, addresses, requirements and credit standings, supplier identities, designs, and costs where:

- There was exclusive family control of the company for 49 years.
- The company had a past policy of keeping its information secret.
- The company shared the information with the defendant employee under an explicit understanding that the information should be kept secret at all times.

(*New England Overall Co.*, 176 N.E.2d at 199.)

An employer failed to take reasonable steps to keep its manufacturing processes secret where:

- The employees were not required to sign a nondisclosure agreement.
- There was no written notice to employees that the processes were trade secrets.
- The employees were not warned against discussing the processes outside the plant.
- There was a considerable turnover in the labor force.
- The processes could be seen by employees doing other work.

(*J.T. Healy & Son, Inc.*, 260 N.E.2d at 730.)

In *J.T. Healy & Son, Inc.*, the employer argued that it guarded its processes by not exciting undue interest and intentionally doing nothing to admit that they were secret. The court stated that this approach was completely at odds with the requirement of taking reasonable steps to protect information's secrecy. (*J.T. Healy & Son, Inc.*, 260 N.E.2d at 730.)

Conversely, a corporation took reasonable steps to preserve its machinery's secrecy where:

- The corporation required supervisory, technical, and research employees to sign nondisclosure agreements.
- The employees were on notice that their work may involve access to trade secrets and confidential information.
- The general public was excluded from the production areas of the corporation's plants containing the machinery.

(*USM Corp.*, 393 N.E.2d at 901-02.)

STATUTES OR REGULATIONS

There are no statutes or regulations defining what steps are considered reasonable to protect information alleged to be trade secrets.

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?

To state a trade secrets misappropriation claim, a plaintiff must show the following:

- The existence of a trade secret.
- The plaintiff took reasonable steps to preserve the secrecy of the information.
- The defendant used improper means, in breach of a confidential relationship, to acquire and use the trade secret.

(*Data Gen. Corp. v. Grumman Sys. Support Corp.*, 825 F. Supp. 340, 357 (D. Mass. 1993).)

An employer may sue a former employee for trade secret conversion that violates a written employment agreement (M.G.L. ch. 93, § 42A). Under Section 42A, the employer may be granted a preliminary injunction if the former employee violates the employment agreement by both:

- Working in direct competition with the employer.
- Using the employer's trade secret to compete.

(M.G.L. ch. 93, § 42A.)

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?

In Massachusetts, corporations, corporate officers, and directors, and employees of a competing corporation can be held liable for trade secret misappropriation (*USM Corp. v. Marson Fastener Corp.*, 467 N.E.2d 1271, 1277 (Mass. 1984)).

A trade secret owner may also hold a competing corporation liable for trade secret misappropriation if the competing corporation obtains the trade secrets through an entity with a duty not to disclose the secrets. To be held liable for the use or disclosure of a competitor's trade secret, a defendant must have notice of two facts, that:

- The information claimed to be a trade secret is, in fact, secret.
- The third person's disclosure is a breach of duty.

Actual notice of these facts is not required and inquiry notice is sufficient. A defendant has inquiry notice of facts when he knows or should know of them. (*Curtiss-Wright Corp. v. Edel-Brown Tool & Die Co.*, 407 N.E.2d 319, 323-24 (Mass. 1980).)

The court in *Curtiss-Wright* affirmed the prior court's judgment enjoining the defendant from using the plaintiff's trade secrets but reversed the ruling on damages. The court further noted that the defendant could seek judicial consideration to dissolve the injunction if there is a substantial change in the circumstances (407 N.E.2d at 326 n.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?

Defenses to a misappropriation of trade secrets claim include:

- The information is not secret.
- There was no misappropriation.
- The statute of limitations has expired.
- Lack of standing to sue.
- Lack of personal jurisdiction over the defendant.

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.

In Massachusetts, there are two relevant statutes of limitations concerning trade secrets:

- A three-year statute of limitations for tort actions, including a Massachusetts statutory trade secrets misappropriation claim (M.G.L. ch. 93, §§ 42 and 42A; M.G.L. ch. 260, § 2A; *Prescott v. Morton Int'l, Inc.*, 769 F. Supp. 404, 406 (D. Mass. 1990)).
- A four-year statute of limitations for trade secret misappropriation claims brought under Chapter 93A, section 11 of the Massachusetts Consumer Protection Act (M.G.L. ch. 260, § 5A).

In tort actions and actions for Chapter 93A violations, the cause of action accrues at the time of the plaintiff's injury (*Stark v. Advanced Magnetics, Inc.*, 736 N.E.2d 434, 441 (Mass. App. Ct. 2000)).

For both misappropriation of trade secrets and Chapter 93A claims, a plaintiff need not have actual notice of his injury. The statute of limitations will accrue when an event or events have occurred that are reasonably likely to put the plaintiff on notice of his injury. Essentially, the inquiry is whether the plaintiff either knew or should have known of his injury. (*Stark*, 736 N.E.2d at 443.)

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?

In Massachusetts, trade secrets may be protected through a variety of claims in addition to trade secret misappropriation claims.

Trade secrets may be protected with a breach of contract claim. Covenants not to compete in Massachusetts are generally enforceable only as necessary to protect the employer's legitimate business interests. Legitimate business interests include:

- Protection of trade secrets.
- Confidential information.
- Good will.

(*Me. Pointe, LLC*, 2011 WL 379279 at *3.)

Courts do not enforce non-compete covenants designed to protect a party from ordinary competition, because that is not considered a legitimate business interest (*Me. Pointe, LLC*, 2011 WL 379279 at *3).

To be enforceable, non-compete covenants must also be:

- Reasonably limited in both:
  - time; and
  - space.
- Consistent with the public interest.

(*Boulanger v. Dunkin' Donuts Inc.*, 815 N.E.2d 572, 577 (Mass. 2004).)

For more information on non-competes in Massachusetts, see State Q&A, Non-Compete Laws: Massachusetts (1-505-9160).

Trade secrets may also be protected under the Massachusetts Consumer Protection Act, which prohibits unfair competition and unfair or deceptive acts or practices between businesses (M.G.L. ch. 93A, §§ 1-11). However, an individual cannot be liable under Chapter 93A for conduct that occurred while working for a former employer (*Advanced Micro Devices, Inc. v. Feldstein*, 951 F. Supp. 2d 212, 216 (D. Mass. June 10, 2013); *JRB Med. Assocs., Inc. v. Moran*, 2008 WL 2121002, at *2 (Mass. Super. Ct. May 1, 2008)). Employers may only sue for conduct that occurred post-employment (*Peggy Lawton Kitchens, Inc. v. Hogan*, 466 N.E.2d 138, 141 (Mass. App. 1984)).

Potential remedies under the Consumer Protection Act include:

- Injunctive relief.
- Multiple damages.
- Costs and attorneys' fees.

(M.G.L. ch. 93A, § 9.)

Employers may also protect trade secrets using claims of breach of fiduciary duty or loyalty by key employees. However, a departing employee with no express contract not to use or disclose confidential information learned during employment may later use the general skill or knowledge learned on the job. (*New England Overall Co.*, 176 N.E.2d at 198.)

Massachusetts courts have also found that:

- A former employee could use remembered information to solicit clients (*Am. Window Cleaning Co. v. Cohen*, 178 N.E.2d 5, 8 (Mass. 1961)).
- An employee was permitted to use information in his or her memory (*Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 2004 WL 1515502 at *2).

However, an employee may be enjoined under certain circumstances from using or disclosing his former employer's confidential information. The employment relationship creates certain obligations that forbid an employee from harming his employer by using his employer's confidential information for his own, or a competitor's, advantage (*New England Overall Co.*, 176 N.E.2d at 198).

Trade secrets may also be protected by an intentional interference with contractual relations claim. In these actions, a plaintiff must prove that:

- He had a contract with a third-party.
- The defendant knowingly induced the third-party to break that contract.

- The defendant's interference was intentional and improper in motive or means.
- The defendant's actions harmed the plaintiff.

(*CSC Consulting, Inc. v. Arnold*, 2001 WL 1174183, at *4 (Mass. Super. Ct. 2001).)

A plaintiff may also allege intentional interference with contractual relations to protect trade secrets (*Allied Home Mortgage Capital Corp. v. Grant*, 2005 WL 3721194, at *1 (Super. Ct. Mass. 2005)).

In Massachusetts, confidential information not rising to the level of a trade secret may still be protected. Information may not qualify as a trade secret because either:

- The owner failed to take reasonable steps to preserve its secrecy.
- The information, while confidential, is only business information.

(*USM Corp.*, 393 N.E.2d at 903.)

Plaintiffs may obtain relief against defendants who improperly procure confidential information based on equity principles (*USM Corp.*, 393 N.E.2d at 903).

Trade secret misappropriation may also be remedied through criminal prosecution (M.G.L. ch. 266, § 30(4)).

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.

Under the Massachusetts statutes regulating trade secrets, particular acts toward an owner's trade secret can result in tort liability for all resulting damages (M.G.L. ch. 93, § 42). In these cases, Massachusetts courts have the discretion to increase damages up to double the damages amount found (M.G.L. ch. 93, § 42; see Questions 1 and 4).

A plaintiff may also obtain a trade secret-related injunction that restrains the defendant from:

- Taking a trade secret.
- Receiving a trade secret.
- Concealing a trade secret.
- Assigning a trade secret.
- Transferring a trade secret.
- Leasing a trade secret.
- Pledging a trade secret.
- Copying or otherwise using a trade secret.
- Disposing of a trade secret.

(M.G.L. ch. 93, § 42A.)

Massachusetts's Consumer Protection Act prohibits unfair competition along with unfair or deceptive business acts or practices (M.G.L. ch. 93A, §§ 1-11). Plaintiffs often allege trade secret misappropriation claims along with Chapter 93A claims. However, Massachusetts courts have noted certain exceptions to conduct arising under an employment relationship involving trade secret misappropriation claims (see Question 13: Other Related Claims).

Under Chapter 93A, a plaintiff may seek attorneys' fees and actual damages. For knowing or willful violations, a plaintiff may recover at least double, but no more than triple, the actual damages amount.

Violations of the Massachusetts criminal trade secret theft statute are considered larceny and are punishable by either up to:

- Five years' imprisonment.
- Two years' imprisonment and a fine of up to $25,000.

(M.G.L. ch. 266, § 30(4); see Question 4).

CONTRACTUAL PROTECTIONS

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

Generally, there is sufficient consideration if a restrictive covenant is supported by new employment (*Marine Contractors Co. v. Hurley*, 310 N.E.2d 915, 919 (Mass. 1974)). However, when an employee signs a covenant during employment, Massachusetts courts and federal courts interpreting Massachusetts law conflict on whether continued employment is sufficient consideration (*Ikon Office Solutions, Inc. v. Belanger*, 59 F. Supp. 2d 125, 130-31 (D. Mass. 1999); *Lunt v. Campbell*, 2007 WL 2935864, at *4 (Mass. Super. Ct. 2007)).

Massachusetts courts have not specifically adopted the blue-pencil approach. However, federal courts interpreting Massachusetts law may reform otherwise valid agreements if a part is overbroad (*Ferrofluidics Corp. v. Advanced Vacuum Components, Inc.*, 968 F.2d 1463, 1469 (1st Cir. 1992)).

For more information on the blue-pencil approach in Massachusetts, see State Q&A, Non-Compete Laws: Massachusetts: Question 6 (1-505-9160).

MISCELLANEOUS

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

Various Massachusetts common law duties prohibit employees from disclosing employer information, even in the absence of contractual obligations, including:

- Breach of fiduciary duty of loyalty claims (see Question 13).
- Violation of public policy (see Question 3).

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

Some Massachusetts lower courts appear to support the doctrine of inevitable disclosure, while others appear to reject it. However, no appellate court has definitively ruled on the issue and the doctrine is used sparingly in the state (*Corp. Techs., Inc. v. Harnett*, 731 F.3d 6, 14 (1st Cir. 2013).

In *Lombardi Med. Techs., Inc. v. Johannsen*, a federal court interpreting Massachusetts law found that disclosure was inevitable where the defendants were intimately familiar with the weaknesses of the

plaintiff's leading product, had extensive contacts at medical centers through the plaintiff, and were knowledgeable about the plaintiff's non-public clinical trial analyses. The court determined that it was impossible to imagine that the defendants would not use information they had gleaned during their time working for the plaintiff. (729 F.Supp.2d 432, 442 (D. Mass. 2010).)

A court upheld a non-compete preventing a former employee from working for her former employer's competitors for 12 months because she would inevitably draw on confidential and proprietary information or trade secrets learned from her previous employer (*Boch Toyota, Inc. v. Klimoski*, 2004 WL 1689770, at *3 (Mass. Super. Ct. 2004)).

In contrast, another court granted a defendant's motion for summary judgment on trade secret misappropriation because the former employer failed to show its former employee had threatened to disclose trade secrets or would inevitably rely on this information in her new position (*CSC Consulting, Inc.*, 2004 WL 1689770 at *3).

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 (7-501-3409).

For more information on the inevitable disclosure doctrine in Massachusetts, see State Q&A, Non-Compete Laws: Massachusetts: Question 17 (1-505-9160).

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?

Massachusetts courts do not distinguish between confidential information a former employee memorizes during his employment and the taking of a former employer's actual lists or papers. A former employee may be enjoined under certain circumstances from using or disclosing confidential information if:

- He learns information through his employment.
- He retains the information in his memory.
- The information is confidential in nature.

(*Jet Spray Cooler, Inc.*, 282 N.E.2d at 924.)

For more information, see Question 7.

However, see Question 13: Other Related Claims for exceptions to memorizing information concerning conduct arising out of an employment relationship.

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)?

Because Massachusetts has not adopted the model Uniform Trade Secret Act, a plaintiff may assert a trade secret misappropriation claim along with various other common law causes of action (see Question 13).