



# Trade Secret Laws: Connecticut

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A Q&A guide to state law on trade secrets and confidentiality for private employers in Connecticut. This Q&A addresses the state-specific definition 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.

Connecticut has adopted the Connecticut Uniform Trade Secrets Act (*Conn. Gen. Stat. §§ 35-50 to 35-58 (2011)*), often referred to as the CUTSA to distinguish it from the model Uniform Trade Secrets Act (UTSA).

Connecticut does not have a criminal statute regarding trade secrets.

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

Connecticut has adopted the model Uniform Trade Secrets Act (UTSA) with slight modification. It is referred to as the Connecticut Uniform Trade Secrets Act (CUTSA) (*Conn. Gen. Stat. §§ 35-50 to 35-58 (2011)*). For an overview of the UTSA, see *Practice Note, Protection of Employers' Trade Secrets and Confidential Information: Trade Secrets* (<http://us.practicallaw.com/5-501-1473>).

### SIGNIFICANT DIFFERENCES BETWEEN ADOPTED VERSION AND MODEL UTSA

The CUTSA:

- Expands the UTSA's definition of trade secret to include:
  - drawings;
  - cost data; and
  - customer lists.
- Expands the UTSA's definition of improper means to include searching through trash.
- Omits willful and malicious misappropriation as a basis for a prevailing party's entitlement to an award of reasonable attorneys' fees.

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?

### CONNECTICUT COMMON LAW PROTECTIONS OF TRADE SECRETS

Connecticut courts apply the Restatement (Second) of Torts's definition of trade secrets (*Restatement (Second) of Torts § 757 cmt. b (1979)*). For the Restatement's definition of trade secrets, see *Question 4: Common Law Definition of Trade Secrets*.

A trade secret may exist without an explicit, independent contractual obligation. For example, if an employment contract lacks provisions requiring the employee to maintain secrecy of the employer's trade secrets, courts may imply a confidentiality requirement (*Town & Country House & Homes Serv., Inc. v. Evans, 189 A.2d 390 (Conn. 1963)*).

For cases where the plaintiff seeks damages for trade secret misappropriation, the parties have a right to a jury trial (*Evans v. Gen. Motors Corp., 893 A.2d 371 (Conn. 2006)*).

### CUTSA PREEMPTION

The Connecticut Uniform Trade Secrets Act (CUTSA) supersedes any conflicting tort, restitutionary or other Connecticut law providing civil remedies for trade secret misappropriation (*Conn. Gen. Stat. § 35-57 (2011)*).

The CUTSA, however, does not affect:

- Contractual remedies or other civil liability not based on trade secret misappropriation.
- Criminal liability for trade secret misappropriation.
- The duty of a person, state or municipal agency to disclose information:
  - under the Connecticut Freedom of Information Act (*Connecticut FOIA (Conn. Gen. Stat. § 1-210 (2011))*);
  - on toxic substances from employers (*Conn. Gen. Stat. § 31-40j to 31-40p (2011)*);
  - on certain real property valuation and fair market sales documents required by the Connecticut FOIA (*Conn. Gen. Stat. § 12-62(c) (2011)*); and
  - where expressly provided by law.

See *Question 19* for more information on preemption of other causes of action.

For the CUTSA's definition of trade secrets, see *Question 4: Connecticut Uniform Trade Secrets Act Definition of Trade Secrets*.

For the text of the Connecticut FOIA's definition of a trade secret, see the Connecticut Freedom of Information Commission's website.

## 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)?

### CONNECTICUT UNIFORM TRADE SECRETS ACT DEFINITION OF TRADE SECRETS

The Connecticut Uniform Trade Secrets Act (CUTSA) defines a trade secret as information:

- Including a:
  - formula;
  - pattern;
  - compilation;
  - program;
  - device;
  - method;
  - technique;
  - process;
  - drawing;
  - cost data; or
  - customer list.
- That derives actual or potential independent economic value because it is:
  - generally unknown; and
  - not readily ascertainable by proper means by another person who can obtain economic value from its disclosure or use.
- That is the subject of reasonable efforts under the circumstances to maintain its secrecy.

(*Conn. Gen. Stat. § 35-51(d) (2011)*.)

The Connecticut Freedom of Information Act (Connecticut FOIA) expands the CUTSA's definition of trade secrets to also include:

- Film scripts.
- Television scripts.
- Detailed production budgets.

For more information on trade secrets and the Connecticut FOIA, see *Question 3: CUTSA Preemption* and the Connecticut Freedom of Information Commission's website.

### COMMON LAW DEFINITION OF TRADE SECRETS

In addition to the CUTSA's definition of trade secrets, Connecticut courts also apply the Restatement (Second) of Torts's definition of a trade secret (*Restatement (Second) of Torts § 757 cmt. b (1979)*). Although the Restatement notes that a trade secret is impossible to define, it provides guidance that a trade secret:



- May include:
  - a formula;
  - a chemical compound;
  - a process of manufacturing;
  - a treatment or preservation of materials;
  - a pattern;
  - a device; or
  - a compilation of information, such as a customer list.
- Gives a person a competitive advantage over other competitors who do not know or use the trade secret.
- Is a process or device for continuous use in business operations.
- Relates to the production or sale of goods.
- Requires a substantial element of secrecy.

Whether information is a trade secret is a fact-based inquiry. Connecticut courts apply a six-factor balancing test from comment b to determine whether information qualifies as a trade secret. The six factors are:

- The extent to which the information is known outside of the business.
- The extent to which the information is known by employees and other involved in the business.
- The extent of measures taken by the employer to guard the secrecy of the information.
- The information's value to the employer and to competitors.
- The amount of effort or money spent in developing the information.
- The ease or difficulty with which the information could be properly acquired or duplicated by others.

(*Restatement (Second) of Torts*, § 757 cmt. b (1979); *Robert S. Weiss & Assocs., Inc. v. Wiederlight*, 546 A.2d 216 (Conn. 1988).)

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

The Connecticut Uniform Trade Secrets Act (CUTSA) defines a trade secret (*Conn. Gen. Stat. § 35-51(d)* (2011); see *Question 4: Connecticut Uniform Trade Secrets Act Definition of Trade Secrets*). To be protected as a trade secret, courts also require that:

- A substantial element of secrecy exists so that it would be difficult to acquire the information except by using improper means.
- The information is private knowledge and is only known and used in a particular business.
- In the case of customer lists, the information cannot be readily accessible through ordinary business channels or classified business or trade directories (see *Question 7: Customer Lists Can Be Protected As Trade Secrets*).

(*Town & Country House & Homes Serv., Inc. v. Evans*, 189 A.2d 390 (Conn. 1963).)

Courts also apply a fact-based balancing test of the six factors listed in comment b of Section 757 of the Restatement (Second) of Torts. For more information on the six-factor balancing test, see *Question 4: Common Law Definition of Trade Secrets*.

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

Connecticut courts have found the following types of information to be trade secrets under the circumstances present:

- Mechanical devices (*Gen. Clutch Corp. v. Lowry & Cema Techs., Inc.*, 10 F. Supp.2d 124 (D. Conn. 1998)).
- Components of a strategic business plan, but not a business plan as a whole (*Lydall, Inc. v. Ruschmeyer*, 919 A.2d 421 (Conn. 2007)).
- A business plan as a whole, where the process was unique in the industry and the business only had three clients (*Elm City Cheese Co. v. Federico*, 752 A.2d 1037 (Conn. 1999)).
- A manufacturing process (*Elm City Cheese Co. v. Federico*, 752 A.2d 1037 (Conn. 1999)).
- Customer lists that do not include readily ascertainable information (*Robert S. Weiss & Assocs., Inc. v. Wiederlight*, 546 A.2d 216 (Conn. 1988)).
- Computer-controlled systems and accompanying software (*Otis Elevator Co. v. Intelligent Sys., Inc.*, No. CV89-0700549S, 1990 WL 264689 (Conn. Super. Ct. July 18, 1990)).
- Confidential and proprietary information that included the identities, policies, addresses, sizes, renewal dates and premium rate calculations of the customers stored on a computer system (*Blue Cross & Blue Shield of Conn., Inc. v. DiMartino*, No. 300642, 1991 WL 127094 (Conn. Super. Ct. July 2, 1991)).

## NOT TRADE SECRETS

The following information was found not to be trade secrets under the circumstances present:

- Insurance policy holder files of which the contents of the files were not adequately protected (*Nationwide Mut. Ins. Co. v. Mortensen*, 606 F.3d 22 (2d Cir. 2010)).
- Known manufacturing processes used among businesses in the same industry (*Pressure Sci., Inc. v. Kramer*, 413 F. Supp. 618 (D. Conn. 1976)).
- Materials used in the manufacture of a device that tests circuitry of computer chips, where some materials were disclosed to the public and all of the materials were readily ascertainable through proper means and well known to the industry (*Wentworth Labs., Inc. v. Probe 2000, Inc.*, No. CV020346892S, 2002 WL 31758530 (Conn. Super. Ct. Nov. 19, 2002)).

- Customer lists that include only the names and addresses of customers, and no information about the customer's buying habits, requirements or preferences. Notably in this case, no restrictive covenant existed and the employer knew that the employee refused to sign the restrictive covenant not to compete (*Holiday Food Co. v. Munroe*, 426 A.2d 814 (Conn. Super. Ct. 1981)). For more information on protection of customer lists, see *Question 7: Customer Lists Can Be Protected As Trade Secrets*.

### NOT TRADE SECRETS AS A MATTER OF LAW

Whether information is a trade secret is a question of fact for the trial court (*Allen Mfg. Co. v. Loika*, 144 A.2d 306 (Conn. 1958)).

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

Determining whether customer lists are protected as trade secrets is a fact-intensive inquiry. Connecticut courts have also noted that customer lists lie "on the periphery of trade secrets law" (*Nationwide Mut. Ins. Co. v. Mortensen*, 606 F.3d 22 (2d Cir. 2010)).

A customer list may be entitled to trade secret protection when:

- The employee acquired the list in confidence from the employer.
- Customers' names cannot be readily ascertained through ordinary business channels or reference resources (*Robert S. Weiss & Assocs., Inc. v. Wiederlight*, 546 A.2d 216 (Conn. 1988)).
- The customer list was developed from years of business effort, advertising, time and money (*Town & Country House & Homes Serv., Inc. v. Evans*, 189 A.2d 390 (Conn. 1963)).

Courts have denied trade secret protection to customer lists because:

- The list only includes names and addresses of customer information, which is readily ascertainable.
- No special relationship of trust and confidentiality exists between the employer and employee.

(*Holiday Food Co. v. Munroe*, 426 A.2d 814 (Conn. Super. Ct. 1981)).

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

Section 35-52 of the Connecticut Uniform Trade Secrets Act (CUTSA) provides injunctive relief for either actual or threatened misappropriation. The scope of injunctive relief may include a temporary restraining order, preliminary injunction or a temporary injunction (*Conn. Gen. Stat. § 35-52 (2011)*). The CUTSA states that the injunction terminates when the trade secret no longer exists. However, courts may in their discretion continue the injunction for a reasonable period of

time to eliminate commercial advantage that may result from the misappropriation. The CUTSA also allows payment of a reasonable royalty if an injunction to prohibit future use is unreasonable (*Conn. Gen. Stat. § 35-52(b) (2011)*). For more information on reasonable royalties, see *Question 14: Remedies*.

To grant a preliminary injunction, courts consider:

- Whether the plaintiff will suffer irreparable harm absent injunctive relief.
- Either:
  - whether the plaintiff is likely to succeed on the merits on the trade secret claim; or
  - whether there are sufficiently serious questions as to the merits and the balance of hardship favors the plaintiff.

(*MacDermid, Inc. v. Selle*, 535 F. Supp. 2d 308 (D. Conn. 2008).)

To satisfy the irreparable harm requirement, a plaintiff must show that the harm:

- Is actual and imminent.
- Cannot be remedied if the court waits until the completion of trial.

(*Gentworth Fin. Wealth Mgmt., Inc. v. McMullan*, 721 F.Supp.2d 122 (D. Conn. 2010).)

The threatened loss of goodwill and customers may support a finding of irreparable harm (*Gentworth Fin. Wealth Mgmt., Inc. v. McMullan*, 721 F.Supp.2d 122 (D. Conn. 2010)).

A court may grant a temporary injunction, if:

- The plaintiff does not have an adequate legal remedy.
- The plaintiff will suffer irreparable harm without the issuance of a temporary injunction.

The court balances the equities to determine whether the plaintiff will suffer more harm with or without a temporary injunction. Because injunctive relief is provided by statute in Section 35-52 of the CUTSA, the plaintiff does not have the burden of proving irreparable harm and the absence of an adequate remedy at law.

(*Avery Dennison Corp. v. Finkle*, No. CV010757706, 2002 WL 241284 (Conn. Super. Ct. Feb. 1, 2002).)

One court awarded a preliminary injunction that heavily restricted the defendant's use of the plaintiff's customer lists and information. The injunction:

- Prohibited the defendant from communication with the plaintiff's current or prospective clients included in the customer list, unless the client already entered into a contract with the defendant.
- Prohibited the defendant's use and disclosure of the plaintiff's client information, lists or data.
- Required the defendant to return to the plaintiff any customer information previously disclosed to third parties, unless the disclosure was authorized by a client under a binding contract.

(*Gentworth Fin. Wealth Mgmt., Inc. v. McMullan*, 721 F.Supp.2d 122 (D. Conn. 2010).)

## 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

Examples of reasonable efforts by the employer or trade secret owner to protect information as trade secrets include:

- Labeling documents as confidential (*Siemiakaska v. Acme-Monaco Corp.*, No. CV085006861S, 2009 WL 1140366 (Conn. Super. Ct. Mar. 30, 2009)).
- Using read-only files to prevent the printing of confidential information (*Avery Dennison Corp. v. Finkle*, No. CV010757706, 2002 WL 241284 (Conn. Super. Ct. Feb. 1, 2002)).

Under *Blue Cross & Blue Shield of Connecticut Inc. v. DiMartino*, the Connecticut Superior Court found reasonable efforts include:

- Requiring employees to sign a confidentiality agreement.
- Limiting access to the information.
- Maintaining confidential computer access codes for employees.
- Conducting employee training on the importance of maintaining confidentiality of the information.

(No. 300642, 1991 WL 127094 (Conn. Super. Ct. July 2, 1991).)

Under *Otis Elevator Systems, Inc. v. Intelligent System Inc.*, the Connecticut Superior Court found reasonable efforts include:

- Requiring return of the remains of a product if it is destroyed.
- Limiting the servicing of the product by only employees, not outside contractors.
- Contractually forbidding disassembling, repair or duplication of the product.

(No. CV89-0700549S, 1990 WL 264689 (Conn. Super. Ct. July 18, 1990).)

Connecticut courts do not require the employer to maintain exclusive possession of the information (*Robert S. Weiss & Assocs., Inc. v. Wiederlight*, 546 A.2d 216 (Conn. 1988)).

Although non-disclosure agreements are not required (*Allen Mfg. Co. v. Loika*, 144 A.2d 306 (Conn. 1958)), non-disclosure agreements provide evidentiary support to show that the employer took reasonable efforts to maintain secrecy of the information. For more information on non-disclosure agreements, see *Question 15: Contractual Protections*.

### STATUTES OR REGULATIONS

For information to be considered a trade secret, the Connecticut Uniform Trade Secrets Act (CUTSA) requires reasonable efforts under the circumstances to keep information secret (*Conn. Gen. Stat. § 35-51(d)(2) (2011)*).

Courts may also preserve the secrecy of an alleged trade secret by reasonable means by:

- Granting protective orders in connection with discovery proceedings.
- Holding in camera inspections.
- Sealing the records of the action.
- Ordering any person involved in the litigation to not disclose an alleged trade secret without prior court approval.

(*Conn. Gen. Stat. § 35-55 (2011)*.)

### 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?

Misappropriation is defined as either:

- Acquisition.
- Disclosure.

(*Conn. Gen. Stat. § 35-51(b) (2011)*.)

Two elements necessary to assert trade secret misappropriation are:

- The existence of a trade secret (see *Question 4: Connecticut Uniform Trade Secrets Act Definition of Trade Secrets*).
- Actual or threatened misappropriation (see *Acquisition as Misuse* and *Disclosure or Use of Trade Secret as Misuse*).

(*Conn. Gen. Stat. § 35-51(d) (2011)*.)

### ACQUISITION AS MISUSE

A trade secret can be misappropriated where the acquirer knew or had reason to know that the trade secret was acquired by improper means (see *Definition of Improper Means*) (*Conn. Gen. Stat. § 35-51(b)(1) (2011)*).

### DISCLOSURE OR USE OF TRADE SECRET AS MISUSE

Disclosure or use of another's trade secret without express or implied consent constitutes misappropriation where the person either:

- Used improper means to acquire knowledge of the trade secret.
- At the time of disclosure or use, knew or had reason to know that the knowledge of the trade secret was:
  - derived from or through a person who had used improper means to acquire it;

- acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or
- derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use.
- Before a material change of his position, knew or had reason to know that:
  - it was a trade secret; and
  - knowledge of it had been acquired by accident or mistake.

(Conn. Gen. Stat. § 35-51(b) (2011).)

### DEFINITION OF IMPROPER MEANS

Improper means includes:

- Theft.
- Bribery.
- Misrepresentation.
- Breach or inducement of a breach of duty to maintain secrecy.
- Espionage through electronic or other means, including searching through trash.

(Conn. Gen. Stat. § 35-51(a) (2011).)

Improper means does not include:

- Matters of public knowledge.
- Matters of general knowledge in the industry.
- Independent discovery and analysis of publicly available products or information.

(*Town & Country House & Homes Serv., Inc. v. Evans*, 189 A.2d 390 (Conn. 1963).)

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?

Under the Connecticut Uniform Trade Secrets Act, persons who may be liable for trade secret misappropriation include a:

- Natural person.
- Corporation.
- Limited liability company.
- Business trust.
- Estate.
- Trust.
- Partnership.
- Association.
- Joint venture.

- Government.
- Governmental subdivision or agency.
- Any other legal or commercial entity.

(Conn. Gen. Stat. § 35-51(c) (2011).)

The elements in *Question 9* are necessary to prove misappropriation of the trade secret by both individuals and legal and commercial entities.

### 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 trade secret misappropriation claim include:

- The information is not a trade secret.
- There is no actual or threatened misappropriation.
- The three-year statute of limitations has expired (Conn. Gen. Stat. § 35-56 (2011)).
- The trade secret has not been described with the required particularity in the pleading.
- Lack of standing to sue.
- Common law claims have been preempted (Conn. Gen. Stat. § 35-57 (2011)).
- Equitable defense, such as:
  - laches;
  - estoppel;
  - waiver; and
  - unclean hands.

### 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.

The Connecticut Uniform Trade Secrets Act imposes a three-year statute of limitations for misappropriation of trade secrets. Specifically, the three-year period begins to run when either:

- The misappropriation is discovered.
- The misappropriation should have been discovered by exercising reasonable diligence.

(Conn. Gen. Stat. § 35-56 (2011).)

A continuing misappropriation constitutes a single claim (Conn. Gen. Stat. § 35-56 (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?

A plaintiff can allege claims for:

- Contractual remedies not based on misappropriation of a trade secret.
- Other civil remedies not based on misappropriation of a trade secret.
- Criminal remedies for misappropriation of a trade secret.
- Remedies under the Connecticut Unfair Trade Practices Act (*Conn. Gen. Stat. § 42-110a-q (2011)*).
- Remedies based on statutory computer-related offenses, such as employees who access and misuse the employer's computer systems without authorization (*Conn. Gen. Stat. § 52-570b (2011)*).

## 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 Connecticut Uniform Trade Secrets Act (CUTSA) potential relief may include:

- **Monetary damages.** Monetary damages can include actual loss or unjust enrichment caused by misappropriation. Connecticut courts have recognized the use of a reasonable royalty to calculate actual loss (*Evans v. Gen. Motors Corp., No. X06CV940156090S, 2003 WL 21040255 (Conn. Super. Ct. Apr. 22, 2003)*).
- **A reasonable royalty.** If a court determines that an injunction to prohibit future use is unreasonable, it may instead award a reasonable royalty. One court awarded a five-year reasonable royalty of \$10,000 each month for a product that had been marketed nationwide for five years (*Dura-A-Flex, Inc. v. Laticrete Int'l, Inc., No. CV065014930S (X02), 2010 WL 2822742 (Conn. Super. Ct. June 21, 2010)*). Additionally, if determining the award for loss profits or unjust enrichment is difficult, then a reasonable royalty may be particularly useful (*Evans v. Gen. Motors Corp., No. X06CV940156090S, 2003 WL 21040255 (Conn. Super. Ct. Apr. 22, 2003)*).
- **Reasonable attorneys' fees.** A court may award reasonably attorneys' fees if:
  - the misappropriation claim was made in bad faith; or
  - the motion to terminate an injunction is made or resisted in bad faith.

- **Punitive damages.** If the defendant willfully and maliciously misappropriated the trade secret, punitive damages may be awarded up to twice the monetary damages amount. Willful and malicious misappropriation requires a specific intent to cause actual or constructive harm (*Dura-A-Flex, Inc. v. Laticrete Int'l, Inc., No. CV065014930S (X02), 2010 WL 2822742 (Conn. Super. Ct. June 21, 2010)*).
- **Affirmative acts.** A court may order compelling affirmative acts to protect a trade secret.
- **Injunctive relief.** Examples of injunctive relief include:
  - restricting the defendant from disclosing, using or selling the product, customer lists and information or business method (*Elm City Cheese Co. v. Federico, 752 A.2d 1037 (Conn. 1999)*);
  - preventing development or use of information about the production of the product (*Elm City Cheese Co. v. Federico, 752 A.2d 1037 (Conn. 1999)*); and
  - prohibiting the defendant from working for a competitor in the specific area of the trade secret (*Avery Dennison Corp. v. Finkle, No. CV010757706, 2002 WL 241284 (Conn. Super. Ct. Feb. 1, 2002)*).

(*Conn. Gen. Stat. §§ 35-52 to 35-54 (2011)*).

For more information on injunctive relief in the context of customer lists, see *Question 7: Scope of Injunction Enjoining Use of Former Employer's Customer List*.

## CONTRACTUAL PROTECTIONS

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

Non-disclosure and confidentiality agreements are restrictive covenants that may be used to ensure that the employer's trade secrets are kept confidential by the employee. In assessing the enforceability of non-disclosure and confidentiality agreements, Connecticut courts apply a reasonableness standard similar to that applied to non-compete provisions.

The Connecticut courts use a five-factor test to determine whether a restrictive covenant is reasonable under the circumstances. The five factors are:

- The time the restriction is to be in effect.
- The geographical area covered by the restriction.
- The degree of protection afforded to the interest of the party in whose favor the covenant is made.
- The restrictions imposed on the employee's ability to pursue his occupation.
- The potential for undue interference with the interests of the public.

(*Hart, Nininger & Campbell Assocs., Inc. v. Rogers*, 548 A.2d 758 (Conn. App. Ct. 1988).)

The five-factor test is disjunctive. If a court finds one of the factors unreasonable, then that determination is enough to find the agreement unenforceable (*New Haven Tobacco Co. v. Perrelli*, 559 A.2d 715 (Conn. App. Ct. 1989)).

Non-disclosure and confidentiality agreements require sufficient consideration. Sufficient consideration may include an offer for employment. However, there is contradictory authority as to whether continued employment is sufficient consideration (*RKR Dance Studios, Inc. v. Makowski*, No. CV084035468, 2008 Conn. Super. LEXIS 2295 (Conn. Super. Ct. Sept. 12, 2008)).

Generally, Connecticut courts do not blue pencil agreements that are found unreasonable. However, courts may blue pencil an agreement if it explicitly authorizes the court to reform the agreement (*Gartner Group, Inc. v. Mewes*, No. CV910118332, 1992 Conn. Super. LEXIS 28 (Conn. Super. Ct. Jan. 3, 1992)).

For general information on non-disclosure and confidentiality agreements, see *Practice Note, Confidentiality and Nondisclosure Agreements* (<http://us.practicallaw.com/7-501-7068>).

### MISCELLANEOUS

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

Connecticut courts impose a common law fiduciary duty of loyalty on employees not to use trade secrets or other confidential information of their employers. The employee remains subject to a duty of loyalty not to use trade secrets acquired in the course of employment for the employee's own benefit or for a competitor and to the detriment of the former employer even without an independent contractual obligation (*Allen Mfg. Co. v. Loika*, 144 A.2d 306 (Conn. 1958)).

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

The doctrine of inevitable disclosure is recognized in Connecticut (see *Branson Ultrasonics Corp. v. Stratman*, 921 F. Supp. 909 (D. Conn. 1996)).

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* (<http://us.practicallaw.com/7-501-3409>). For more information on the inevitable disclosure doctrine in Connecticut, see *State Q&A: Non-compete Laws: Connecticut* (<http://us.practicallaw.com/3-506-2779>).

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?

Connecticut courts note that the Connecticut Uniform Trade Secrets Act does not address whether trade secrets committed to memory amounts to misappropriation. The courts apply the same analysis to memorized trade secrets and tangible representations of information. There is no exception for use of memorized trade secrets. However, Connecticut courts recognize the thin line between generalized experience that a former employee can use during future employment and specific confidential information that the employee may not use (*Gen. Reinsurance Corp. v. Arch Capital Grp., Ltd.*, No. X05CV074011668S, 2007 WL 3121766 (Conn. Super. Ct. Oct. 17, 2007)).

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)?

The Connecticut Uniform Trade Secrets Act (CUTSA) generally supersedes conflicting tort, restitutionary or other Connecticut laws providing civil remedies for trade secret misappropriation (see *Question 3: CUTSA Preemption*).

Because contractual duties not based on trade secret misappropriation are not superseded by the CUTSA, the statute does not preempt certain breach of contract claims, such as a breach of noncompetitive provisions in an employment contract.

Because the elements of tortious interference do not conflict with the CUTSA, the statute does not preempt claims of tortious interference. The elements of tortious interference include the:

- Existence of a contractual or beneficial relationship.
- Defendant's knowledge of that relationship.
- Intent to interfere with that relationship.
- Actual loss suffered by the plaintiff.

Claims of an unenforceable non-compete or confidentiality agreement are not preempted by the CUTSA (*Hart, Nininger & Campbell Assocs., Inc. v. Rogers*, 548 A.2d 758 (Conn. App. Ct. 1988)). For more information on the enforceability of non-compete or confidentiality agreements, see *Question 15: Contractual Protections*.



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