

## Trade Secret Laws: Illinois

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A Q&A guide to state law on trade secrets and confidentiality for private employers in Illinois. 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. 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.**

Illinois has adopted the Illinois Trade Secrets Act (765 ILCS 1065/1 to 1065/9), referred to as the ITSA, to distinguish it from the model Uniform Trade Secrets Act.

Illinois does not have a criminal statute specifically 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

Illinois has adopted the model Uniform Trade Secrets Act (UTSA), with slight modification. It is referred to as the Illinois Trade Secrets Act (ITSA) (765 ILCS 1065/1 to 1065/9.) For an overview of the UTSA, see [Practice](#)

[Note, Protection of Employers' Trade Secrets and Confidential Information: Trade Secrets.](#)

### Significant Differences Between Adopted Version and Model UTSA

#### Expanded Definition of Trade Secret

The ITSA expands the UTSA's definition of a trade secret to include:

- Drawings.
- Financial data.
- Technical or non-technical data.
- Lists of actual or potential customers or suppliers.

(765 ILCS 1065/2(d); UTSA § 1(4).)

#### Acquisition of Trade Secrets

Under the ITSA, acquisition of trade secrets by improper means does not include:

- Reverse engineering.
- Independent development.

(765 ILCS 1065/2(a).)

The ITSA does not affect the definition of a trade secret contained in any other Illinois statute (765 ILCS 1065/8(b)(4)).

#### Enforceability of Nondisclosure Agreements

The ITSA does not affect contractual remedies. The ITSA provides that a contractual or other duty to maintain secrecy is not void or unenforceable solely

for lack of durational or geographical limitation (765 ILCS 1065/8(b)(1).)

### Statute of Limitations

The ITSA imposes a five-year statute of limitations, compared with the UTSA's three-year statute of limitations (765 ILCS 1065/7; UTSA § 6).

### Additional Differences

The ITSA omits the UTSA provisions regarding:

- Uniformity of Application and Construction (UTSA § 8).
- Severability (UTSA § 10).
- Repeal (UTSA § 12).

### 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?

The Illinois Trade Secrets Act preempts the former common law protecting trade secrets. However, many of the common law standards and analyses remain relevant (765 ILCS 1065/8.) For more information on the relevance of common law, see Question 4.

## 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)?

The Illinois Trade Secrets Act defines a trade secret as information that:

- Includes:
  - technical or non-technical data;
  - a formula;
  - a pattern;
  - a compilation;
  - a program;
  - a device;
  - a method;

- a technique;
- a drawing;
- a process;
- financial data; or
- a list of actual or potential customers or suppliers.

- Is sufficiently secret to derive actual or potential economic value from not being generally known to those who can obtain economic value from its disclosure or use.
- Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy or confidentiality.

(765 ILCS 1065/2(d).)

To determine whether information is a trade secret, Illinois courts evaluate common law factors in addition to ITSA requirements, including:

- The extent to which the information is known:
  - outside of the business; and
  - by employees and others involved in the business.
- The measures taken by the business to guard the secrecy of the information.
- The value of the information to the business and its competitors.
- The amount of effort or money expended by the business in developing the information.
- The ease or difficulty for others to properly acquire or duplicate the information.

(*Delta Med. Sys. v. Mid-Am. Med. Sys., Inc.*, 331 Ill. App. 3d 777, 789–91 (2002).)

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

To determine whether information is a trade secret, Illinois courts focus on whether the information:

- Is secret.
- Has economic value because of its secrecy.

(*George S. May Int'l Co. v. Int'l Profit Assocs.*, 256 Ill. App. 3d 779, 788 (1993).)

The economic value requirement prevents protection of information not generally known to the public but clearly understood in a particular industry (*George S. May Int'l Co.*, 256 Ill. App. 3d at 788). For more information on what Illinois courts consider a trade secret, see Questions 6 and 7.

Additionally, an Illinois federal court case refused to dismiss part of a claim under the Illinois Trade Secrets Act that was based on a social media group membership list (*CDM Media USA, Inc. v. Simms*, 2015 WL 1399050, at \*4-5 (N.D. Ill. Mar. 25, 2015) (applying Illinois law)).

### 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

In Illinois, types of information that have been found to be trade secrets include:

- Computer software source codes (*Computer Assocs. Int'l v. Quest Software, Inc.*, 333 F. Supp. 2d 688, 695-97 (N.D. Ill. 2004) (applying Illinois law)).
- Financial data on profits (*Brostron v. Warmann*, 190 Ill. App. 3d 87, 90 (1989)).
- Circuitry schematics (*Televation Telecomm. Sys., Inc. v. Saindon*, 169 Ill. App. 3d 8, 17-18 (1988)).
- Research, design, and marketing plans, product formulations, production methods, and customer and supplier identities that are not publicly available (*Lucini Italia Co. v. Grappolini*, 2003 WL 1989605, at \*16 (N.D. Ill. Apr. 28, 2003) (applying Illinois law)).
- Sales data and market analysis information (*RKI, Inc. v. Grimes*, 177 F. Supp. 2d 859, 873-74 (N.D. Ill. 2001) (applying Illinois law)).

## Not Trade Secrets

Types of information that have been found **not** to be trade secrets include:

- Customer identities and lists readily obtainable through:

- phone books;
- mailing lists;
- the internet;
- trade publications; or
- association memberships and directories.

(*Sys. Dev. Servs., Inc. v. Haarmann*, 389 Ill. App. 3d 561, 575-76 (2009); *Curtis 1000, Inc. v. Suess*, 843 F. Supp. 441, 451-52 (C.D. Ill. 1994) (applying Illinois law)).

- Pricing information freely disclosed to customers (*Unisource Worldwide, Inc. v. Carrara*, 244 F. Supp. 2d 977, 987 (C.D. Ill. 2003) (applying Illinois law)).

## Not Trade Secrets as a Matter of Law

Types of information that have been found not to be trade secrets as a matter of law include:

- Information or processes commonly known within the industry (see *Composite Marine Propellers, Inc. v. Van Der Woude*, 962 F.2d 1263, 1265-67 (7th Cir. 1992) (applying Illinois law); *Chemetall GMBH v. ZR Energy, Inc.*, 138 F. Supp. 2d 1079, 1083-84 (N.D. Ill. 2001) (applying Illinois law)).
- Information developed with little time, money, and effort (*Web Commc'ns Grp., Inc. v. Gateway 2000, Inc.*, 889 F. Supp. 316, 319-20 (N.D. Ill. 1995) (applying Illinois law)).
- Information so outdated that it lacks current economic value (*Applied Indus. Materials Corp. v. Brantjes*, 891 F. Supp. 432, 438-39 (N.D. Ill. 1994) (applying Illinois law)).

### 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?

## Customer Lists Can Be Protected as Trade Secrets

Illinois courts recognize customer lists and pricing information as trade secrets. However, the determination depends on the facts of the case (*Multiut Corp. v. Draiman*, 359 Ill. App. 3d 527, 536 (2005).)

To be a trade secret, a customer list must include information that is:

- Sufficiently secret to derive actual or potential economic value from not being generally known to others who can obtain economic value from its disclosure or use.
- The subject of reasonable efforts to maintain its secrecy or confidentiality.

(765 ILCS 1065/2(d).)

Customer lists have been held to be trade secrets where:

- The employer developed the list:
  - over a substantial period of time; and
  - at great expense.
- The information is unavailable to other employees, the public, or competitors.

(*Elmer Miller, Inc. v. Landis*, 253 Ill. App. 3d 129, 134 (1993).)

Customer lists have been held **not** to be trade secrets where:

- The employer did not treat the information as confidential and secret.
- The information was available to other employees.
- The business failed to take steps to restrict employee access to the list.
- The business did not inform employees the information was confidential.
- The business did not require employees to sign confidentiality agreements.
- Competitors knew the information.
- The information could be easily duplicated by reference to telephone directories or professional publications.
- Competitors knew customer identities.

(*Liebert Corp. v. Mazur*, 357 Ill. App. 3d 265, 279 (2005); *Office Mates 5, N. Shore, Inc. v. Hazen*, 234 Ill. App. 3d 557, 575-76 (1992).)

### Scope of Injunction Enjoining Use of Former Employer's Customer List

Courts in Illinois enjoin the use of a former employer's customer list where, for instance, the former employee:

- Had access to the former employer's customers. The injunction is limited:

- to the specific customers to whom the employee had access; and

- in duration, balancing social and economic policy considerations, including the need to protect the legitimate interests of the former employer and the burden on the former employee.

(*Stampede Tool Warehouse, Inc. v. May*, 272 Ill. App. 3d 580, 591 (1995); see *TIE Sys., Inc. Illinois v. Telecom Midwest, Inc.*, 203 Ill. App. 3d 142, 151 (1990) (injunction limited to specific customer files that were missing when former employee quit).)

- Misappropriated customer account information before setting up a competing business (*Burt Dickens & Co. v. Bodi*, 144 Ill. App. 3d 875, 885 (1986)).

## 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

Illinois courts cite several reasonable steps that an employer can use to protect its customer information, including:

- Severely restricting employee access to customer expiration lists.
- Disclosing only relevant account information to each salesperson.
- Using a secret code to access information.
- Restricting computer printouts of customer information.
- Shredding and disposing of computer printouts after use.
- Informing all employees that customer expiration lists were confidential property that could not be disclosed or removed from the office.

(*Burt Dickens & Co.*, 144 Ill. App. 3d at 880.)

A federal district court, applying Illinois law, held an employer took reasonable steps to protect information as a trade secret where:

- Employee manuals contained confidentiality policies to:
  - prevent outsiders from gaining access to the information; and
  - limit access within the company.
- The employer reminded the employees of their confidentiality obligations when leaving the company.
- Only employees with security key cards could access the company's premises.
- The information was never released to the general public.

(*Comput. Assocs. Int'l*, 333 F. Supp. 2d at 696.)

Additional reasonable steps to protect customer information might include:

- Keeping the trade secret in computerized form with restricted access (*Burt Dickens & Co.*, 144 Ill. App. 3d at 881).
- Locking up secret documents (*Strata Mktg., Inc. v. Murphy*, 317 Ill. App. 3d 1054, 1069 (2000)).
- Limiting access to the information on a need-to-know basis (*Televation Telecomm. Sys., Inc.*, 169 Ill. App. 3d at 17).
- Asking employees to sign confidentiality agreements (*Stampede Tool Warehouse, Inc.*, 272 Ill. App. 3d at 589).

Reasonable security efforts may vary with business size. Reasonable efforts to maintain secrecy for a two- or three-person shop may differ from reasonable steps for a larger company (see *Elmer Miller, Inc.*, 253 Ill. App. 3d at 134.)

### Statutes or Regulations

There are no statutes or regulations addressing what are reasonable steps to maintain the 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?**

The Illinois Trade Secrets Act (ITSA) defines misappropriation to include:

- Acquisition.
- Disclosure.
- Use.

(765 ILCS 1065/2(b).)

Under the ITSA, the elements of trade secret misappropriation are:

- A trade secret existed.
- The trade secret was misappropriated through improper acquisition, disclosure, or use.
- The owner of the trade secret was damaged by the misappropriation.

(*Nat'l Tractor Parts Inc. v. Caterpillar Logistics, Inc.*, 2020 Ill. App. (2d) 181056, ¶ 40; *Liebert Corp.*, 357 Ill. App. 3d at 281.)

### 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 (765 ILCS 1065/2(b)(1); see Definition of Improper Means).

### Disclosure or Use of Trade Secret as Misuse

Disclosure or use of another's trade secret without express or implied consent can constitute misappropriation where the acquirer:

- Used improper means to acquire knowledge of the trade secret.
- Knew or had reason to know, when the disclosure or use occurred, that the trade secret was:
  - derived from a person who 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 a person who owed a duty to maintain its secrecy or limit its use.
- Knew or had reason to know, before a material change of position, that:
  - the information was a trade secret; and
  - knowledge of the information had been acquired by accident or mistake.

(765 ILCS 1065/2(b)(2).)

### Definition of Improper Means

Improper means under the ITSA includes:

- Theft.
- Bribery.
- Misrepresentation.
- Breach or inducement of a breach of a duty to maintain secrecy or limit use.
- Espionage through electronic or other means.

(765 ILCS 1065/2(a).)

Improper means does not include:

- Reverse engineering.
- Independent development.

(765 ILCS 1065/2(a).)

### **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 Illinois Trade Secrets Act (ITSA), entities that may be liable for trade secret misappropriation include:

- Individuals.
- Corporations.
- Business trusts.
- Estates.
- Trusts.
- Partnerships.
- Associations.
- Joint ventures.
- Governments.
- Governmental subdivisions and agencies.
- Any other legal entity.

(765 ILCS 1065/2(c).)

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

Under the ITSA, two businesses successfully stated a trade secrets misappropriation claim against a restaurant chief executive in his individual capacity where he both:

- Acted as chief executive of a competitor.
- Misappropriated trade secrets regarding:
  - suppliers;
  - sales;
  - employee histories;
  - gross profits;
  - revenues;
  - expenses;
  - financing agreements;
  - investor lists;
  - marketing plans; and
  - special customer relationships.

(*MJ & Partners Rest. Ltd. P'ship v. Zadikoff*, 10 F. Supp. 2d 922, 933 (N.D. Ill. 1998) (applying Illinois law).)

Additionally, a chemical manufacturer successfully sued a competing corporation under the ITSA for trade secret misappropriation where the competitor:

- Hired one of the manufacturer's former employees who disclosed his former employer's trade secret formula.
- Developed and sold a product using a similar formula.
- Ignored the former employee's warning that using a similar formula would likely cause a misappropriation lawsuit.

(*Mangren Research & Dev. Corp. v. Nat'l Chem. Co., Inc.*, 87 F.3d 937, 944-46 (7th Cir. 1996) (applying Illinois law).)

### 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?**

In Illinois, defenses to a misappropriation of trade secrets claim include:

- The information is not a trade secret (see Question 4).
- There was no misappropriation (see Question 9).
- The statute of limitations has expired (see Question 12).
- The trade secret has not been described with the requisite specificity in the pleading (*Covenant Aviation Security, LLC v. Berry*, 15 F. Supp. 3d 813, 818 (N.D. Ill. 2014) (applying Illinois law)).
- Lack of standing to sue (*Wood River Twp. v. Wood River River Hosp.*, 331 Ill. App. 3d 599, 604-05 (2002)).
- The trade secret owner failed to use reasonable efforts to protect its trade secret (*Jackson v. Hammer*, 274 Ill. App. 3d 59, 66-68 (1995)).
- Equitable defenses, including:
  - laches (*Fed. Nat'l Mortg. Ass'n v. Altamirano*, 2020 IL App (2d) 190198, ¶¶ 16-26);
  - estoppel (*Hahn v. Cnty. of Kane*, 2013 IL App (2d) 120660, ¶17);
  - waiver (*MPC Containment Sys., Ltd. v. Moreland*, 2008 WL 1775501, at \*3-4 (N.D. Ill. April 17, 2008) (applying Illinois law)); and
  - unclean hands (*MPC Containment Sys., Ltd.*, 2008 WL 1775501, at \*4-5 (applying Illinois law)).

### 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 Illinois Trade Secrets Act has a five-year statute of limitations. The five-year period begins to run from when the misappropriation either:

- Is discovered.
- With reasonable diligence, should have been discovered.

(765 ILCS 1065/7.)

A continuing misappropriation is treated as a single claim (765 ILCS 1065/7).

### 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?**

The Illinois Trade Secrets Act (ITSA) displaces conflicting tort, restitutionary, unfair competition, and other Illinois laws providing civil remedies for trade secret misappropriation (765 ILCS 1065/8(a)).

However, a plaintiff may allege:

- Contractual remedies, whether or not based on misappropriation of a trade secret.
- Criminal remedies, whether or not based on misappropriation of a trade secret.
- Other civil remedies that are **not** based on misappropriation of a trade secret.

(765 ILCS 1065/8(b).)

The definition of a trade secret contained in any other Illinois act is not affected by the ITSA (765 ILCS 1065/8(b)(4)). For more information on claims preempted by the ITSA, see Question 19.

### 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.**

In Illinois, potential relief for trade secret misappropriation includes:

- Monetary damages, including:
  - the amount of actual loss caused by the misappropriation; and
  - compensation for any unjust enrichment caused by the misappropriation that is not factored into calculating the amount of actual loss.
- Exemplary damages not to exceed twice the awarded monetary damages.
- Injunction.
- Attorney's fees, only if:

- a claim of misappropriation or motion to terminate an injunction was made or resisted in bad faith; or
- willful and malicious misappropriation occurred.
- A reasonable royalty.
- A court order compelling affirmative acts to protect a trade secret.

(765 ILCS 1065/3, 1065/4, and 1065/5.)

### Contractual Protections

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

Under Illinois law, a post-employment restrictive covenant is enforced if its terms are reasonable (*Coady v. Harpo, Inc.*, 308 Ill. App. 3d 153, 160–61 (1999)).

A restrictive covenant's reasonableness is a fact-intensive inquiry and is based on the totality of the circumstances (*Cambridge Eng'g, Inc. v. Mercury Partners 90 Bl, Inc.*, 378 Ill. App. 3d 437, 447 (2007)). Illinois courts hold that a restrictive covenant is reasonable if the covenant:

- Is no greater than required to protect a legitimate business interest of the employer.
- Does not impose undue hardship on the employee.
- Does not injure the public.

(*Reliable Fire Equip. Co. v. Arredondo*, 2011 IL 111871, ¶ 17.)

Before making a determination on the reasonableness and therefore enforceability of a restrictive covenant, the court must determine whether both:

- The restrictive covenant is ancillary to a valid contract or employment relationship but subordinate to the contract's or relationship's main purpose.
- There was adequate consideration to support the restrictive covenant.

(*Brown & Brown, Inc. v. Mudron*, 379 Ill. App. 3d 724, 728 (2008); *Lawrence & Allen, Inc. v. Cambridge Human Res. Grp., Inc.*, 292 Ill. App. 3d 131, 137 (1997).)

Continued employment for a substantial period may be sufficient consideration to support a restrictive covenant (*Applied Micro, Inc. v. SJI Fulfillment, Inc.*, 941 F. Supp. 750, 753 (N.D. Ill. 1996) (applying Illinois law)). However, absent any other consideration, two

years of employment is required for a non-compete agreement to be deemed supported by sufficient consideration, even when the employee:

- Signed the restrictive covenant as a condition to their employment offer.
- Voluntarily resigned.

(*Fifield v. Premier Dealer Servs., Inc.*, 2013 IL App (1st) 120327, ¶ 19.)

Federal courts in Illinois have taken a more flexible fact-specific approach to determining whether adequate consideration exists (see *Stericycle, Inc. v. Simota*, 2017 WL 4742197, at \*4 (N.D. Ill. Oct. 20, 2017) (applying Illinois law) (rejecting a bright-line two-year rule and requiring a fact-specific evaluation of the adequacy of consideration, noting the Illinois Supreme Court has yet to address the issue)). Appellate courts in Illinois have declined to follow the federal district courts (see *Axion RMS, Ltd. v. Booth*, 2019 IL App (1st) 180724, ¶ 21, n.6).

Illinois courts may blue pencil an overbroad restrictive covenant, including a confidentiality or nondisclosure agreement (see *Gillespie v. Carbondale & Marion Eye Ctrs., Ltd.*, 251 Ill. App. 3d 625, 628–29 (1993)).

Confidentiality agreements that are vastly overbroad and include virtually every kind of information that the employee learned during employment are unenforceable under Illinois law (*AssuredPartners, Inc. v. Schmitt*, 2015 IL App (1st) 141863, ¶ 46 (2015)).

For more information on restrictive covenants in Illinois, see [State Q&A, Non-Compete Laws: Illinois](#).

Additionally, under the Illinois Workplace Transparency Act, any covenant that waives the right of an employee to testify against an employer in a proceeding concerning alleged criminal conduct or alleged unlawful employment practices, when the employee has been required or requested to attend the proceeding under a court order, subpoena, or written request from an administrative agency or the legislature, is void and unenforceable (820 ILCS 96/1–40).

### Miscellaneous

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



In Illinois, common law duties that prohibit employees from disclosing employer information include:

- The duty of loyalty.
- Fiduciary duties.

(*Advantage Mktg. Grp. v. Keane*, 2019 IL App (1st) 181126, ¶ 27.)

Employees owe their employers a fiduciary duty of loyalty. An agent is a fiduciary for all matters within the scope of their agency. An employee must exercise the utmost good faith and loyalty toward their employer. The relationship implies that the agent acts on the principal's behalf and is not in competition with the principal (*Advantage Mktg. Grp.*, 2019 IL App (1st) 181126, ¶ 27.)

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

Illinois recognizes the doctrine of inevitable disclosure (765 ILCS 1065/3(a)). To prove a trade secret misappropriation claim under this doctrine, an employer must show that the former employee's new employment will inevitably lead them to use the former employer's trade secrets in the employee's new position (*PepsiCo, Inc. v. Redmond*, 54 F.3d 1262, 1269 (7th Cir. 1995)). This is true even if the employee did not take anything containing the confidential information (*Strata Mktg., Inc.*, 317 Ill. App. 3d at 1070).

For more information on inevitable disclosure in Illinois, see [State Q&A, Non-Compete Laws: Illinois: Question 17](#).

### 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?

Under Illinois law, an employee can breach their confidential relationship with their employer by surreptitiously copying or memorizing secret information to solicit their employer's customers after the employee's termination (*TIE Sys., Inc., Ill.*, 203 Ill. App. 3d at 149).

Illinois courts have enjoined the use of memorized trade secrets. An appellate court enforced a three-year injunction, rejecting a former employee's argument that he had inadvertently memorized his former employer's

electronic circuitry schematics following constant exposure to the information (*Televation Telecomm. Sys., Inc., Ill.*, 169 Ill. App. 3d at 13-14).

### 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 Illinois Trade Secrets Act (ITSA) preempts conflicting tort, restitutionary, unfair competition, and other Illinois laws providing civil remedies for trade secret misappropriation (765 ILCS 1065/8(a); see *Hecny Transp., Inc. v. Chu*, 430 F.3d 402, 404 (7th Cir. 2005) (applying Illinois law)).

Claims are generally preempted only when they rest on the conduct that is alleged to misappropriate trade secrets. In analyzing preemption issues, a court must determine whether the claim either:

- Rests on trade secret misappropriation.
- Stems from other conduct.

(*EBI Holdings, Inc. v. Butler*, 2009 WL 400634, at \*4 (C.D. Ill. Feb. 17, 2009) (applying Illinois law).)

This is a fact-intensive inquiry that depends on the circumstances of each case. For instance, where plaintiff's claims stemmed from conduct other than trade secret misappropriation, a federal district court, applying Illinois law, did not preempt the plaintiffs' claims for:

- Inducement of breaches of fiduciary duty and duty of loyalty.
- Tortious interference with contract.
- Unjust enrichment, because the claim could concern information other than trade secrets.
- Civil conspiracy.
- Tortious interference with prospective economic advantage.

(*EBI Holdings, Inc.*, 2009 WL 400634, at \*4-6.)

In contrast, a plaintiff's tortious interference with a contract claim was preempted where the claim was based on the same conduct that the plaintiff alleged

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gave rise to their claim under the ITSA (*Aspen Mktg. Servs., Inc. v. Russell*, 2009 WL 4674061, at \*6 (N.D. Ill. Dec. 3, 2009) (applying Illinois law)).

A plaintiff may allege:

- Contractual remedies, whether or not based on misappropriation of a trade secret.

- Criminal remedies, whether or not based on misappropriation of a trade secret.
- Other civil remedies that are **not** based on misappropriation of a trade secret.

(765 ILCS 1065/8(b).)

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