

CONFIDENTIALITY AGREEMENTS SHOULD BE A CONDITION OF EMPLOYMENT

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REPORT FROM COUNSEL

It is our pleasure to keep you apprised of insights, developments and changes affecting today's legal world and businesses. By understanding and gathering insight into these developments and issues you can take the necessary action to insure a prosperous future.

CONFIDENTIALITY AGREEMENTS

To get an edge in today's competitive marketplace, businesses look to exploit every opportunity that presents itself. Without protections in place, this means that competitors may take advantage of your company's confidential and proprietary information, such as customer lists, prospective customer lists, employee lists, pricing, general business know-how, future plans and even trade secrets that your former employees had access to. Even more insidious is the case of an employee pilfering, exploiting and selling your company's sensitive information, including customer leads, for their own personal gain while still currently employed and being paid by you.

As an employer, your business should be proactive and protect sensitive information by requiring a confidentiality agreement as a precondition of employment prior to providing access to such information. By having the prospective employee or independent contractor sign a confidentiality agreement prior to employment, the candidate knows of his/her obligations concerning your company's confidential information from the outset. If the candidate refuses to sign, then you know the candidate may not be the right person for the position and sensitive information has not been compromised.

State law does provide some protection, but reliance on state law and litigation for a common law tort is misplaced. Absent an express agreement for injunctive relief and damages, including a forfeiture of any deferred compensation package, costs of investigation, and attorneys' fees, state law in and of itself may not provide adequate remedies for damage that has been done. More significantly, reliance on state law puts you, the employer, in a "reactive" or "responsive" posture to try and do damage control. Instead, employers are better advised to allow state law to supplement a confidentiality agreement tailored to your business

or, if necessary, the specific position or employee and provide the necessary remedies to compensate your business for the damages and costs of investigation.

The confidentiality agreement can be easily placed into an employment or independent contractor agreement, or signed as a separate contract. Providing access to confidential information is sufficient consideration from the employer's standpoint to make the agreement binding and the employee's confidentiality obligations enforceable in court. Care should be taken in defining your confidential information and to ensure that all of your business' sensitive, confidential and proprietary information falls within the scope of the confidentiality agreement's protections. Additionally, in the event of breach, the employers need to be able to avail themselves of immediate injunctive relief without the legal formalities of proving damages or posting a cash bond, which should be agreed to and provided for within the confidentiality agreement.

In summary, be proactive in protecting your business' proprietary and confidential information rather than reactive and require a confidentiality agreement as a precondition of employment.

If anyone has any questions or inquiries concerning this subject matter, do not hesitate to contact us. Feel free to email us your questions or comments concerning this newsletter.

UPCOMING SEMINARS

JOSEPH R. POZZUOLO, ESQUIRE AND JEFFREY H. SMITH, ESQUIRE WILL BE PRESENTING "CLOSELY HELD BUSINESS LAW SYMPOSIUM FOR THE SUBURBAN GENERAL PRACTITIONER AND CPA" A CONTINUING LEGAL EDUCATION/CONTINUING PROFESSIONAL EDUCATION (CLE/CPA) SEMINAR FOR ATTORNEYS AND CERTIFIED PUBLIC ACCOUNTANTS ON FRIDAY, NOVEMBER 6, 2009 AT NEUMANN UNIVERSITY.

JUDITH P. RODDEN, ESQUIRE WILL BE PRESENTING "COMMERCIAL & RESIDENTIAL REAL ESTATE PRACTICE TODAY: FROM NEGOTIATIONS TO CLOSING, WITH ETHICS" A CONTINUING LEGAL EDUCATION/CONTINUING PROFESSIONAL EDUCATION (CLE/CPA) SEMINAR FOR ATTORNEYS AND CERTIFIED PUBLIC ACCOUNTANTS ON THURSDAY, DECEMBER 3, 2009 AT NEUMANN UNIVERSITY.

JOSEPH R. POZZUOLO, ESQUIRE AND LISA A. LEGGIERI, ESQUIRE WILL BE PRESENTING "THE REALITIES OF ESTATE PLANNING IN THE 21ST CENTURY - DIVORCE, REMARRIAGE AND NON-TRADITIONAL FAMILIES" A CONTINUING LEGAL EDUCATION/CONTINUING PROFESSIONAL EDUCATION (CLE/CPA) SEMINAR FOR ATTORNEYS AND CERTIFIED PUBLIC ACCOUNTANTS ON FRIDAY, DECEMBER 11, 2009 AT NEUMANN UNIVERSITY.

PUBLICATIONS

All of the following publications and past newsletters are available by clicking here:
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Corporate

Deferred Compensation Rewards And Retains Key Employees
How To Use Non-Qualified Deferred Compensation Arrangements As A Business, Retirement And Tax Planning Tool
Protecting A Client's Business From Unfair Competition Using Restrictive Covenants
Money Purchase Pension Plan Falls Out Of Favor
Why An Employment Contract Is Mandatory
What Type of Qualified Corporate Retirement Plan Best Serves Your Business, Tax and Retirement Needs
Structuring Loans From Qualified Plans- How to Handle the Strict Tax Rules
How An S Corporation Avoids The Double Taxation Incurred When Excessive Compensation Is Treated As A Dividend
Bankruptcy - How To Prevent It and How To Cope With It Should it Happen To Your Business
How To Look, Act And Sound Like A Professional Corporation
How Mortgage Lenders Should Draft Broker Agreements To Avoid RESPA Violations
How To Structure A Suitable Buy-Sell Agreement
How To Structure A Buy-Sell Agreement For Advanced Business And Estate Planning Succession (Pre-Publication Draft)

Estate

The Limited Liability Company - A Sophisticated Tool for Estate Planning
Diversify Strategies For An Effective Estate Plan
Use Wills To Maximize Family Protection And Minimize Tax
Six Proven Estate Planning Techniques
Divorce Raises the Need for Performing an Estate Planning Review
Divorce And Estate Planning
Remarriage Situations Can Raise Special Estate Planning Considerations
College Funding Tool Offers Estate Planning Advantage
Drafting The Durable Power Of Attorney For Wealth Protection Purposes
Why Living Wills - Advance Directives Are An Essential Part Of Estate Planning
Special Needs Trust - An Estate Planning Tool For The Disabled
Estate Planning for Same Sex Couples (Pre-Publication Draft)

Actual resolution of legal issues depends upon many factors, including variations of facts and state laws. This newsletter is not intended to provide legal advice on specific subjects. It is to provide insight into legal developments and issues. You should always consult with legal counsel before taking any action on matters covered in our updates.