



Client Alert

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Ninth Circuit Ruling Reinforces Need for Appropriate Trade Secret Protections

Employees who are laid off, fired or otherwise terminated from a company frequently take their former employers' confidential information with them for the benefit of a competitor. A recent federal appeals court ruling reinforces the importance of having appropriate safeguards in place to protect your business in the event that trade secrets and other confidential data are stolen. The Ninth Circuit Court of Appeals held that an employer can take action against a departing employee under the Computer Fraud and Abuse Act (CFAA) for misappropriating company data for the benefit of a competitor if specific restrictions exist. *U.S. v. Nosal*, No. 10-10038, 2011 WL 1585600 (9th Cir. April 28, 2011).

In *Nosal*, the Ninth Circuit allowed a CFAA claim to proceed because the company whose data was misappropriated required its employees to agree that they would only use or disclose electronic information for the employer's legitimate business purposes. The Ninth Circuit distinguished a prior opinion in which a CFAA claim was denied because an employer had placed no restrictions on its employees' ability to access and use its electronic information.

Violations of the CFAA can result in recovery of damages, injunctive relief and even criminal penalties, making it a valuable tool for combating misappropriation of competitively sensitive data. Like the CFAA, Missouri computer tampering statutes and the Missouri Uniform Trade Secret Act ("MUTSA") contain flexible remedial provisions, also making them effective tools for protecting confidential information in the event of a misappropriation by a former employee (or any third party). Each of these statutes - the CFAA, the computer tampering statutes and the MUTSA - requires that certain steps be taken to protect confidential information.

An audit of your policies, practices and agreements with employees can identify ways in which you can improve the safeguards designed to protect your company's valuable trade secrets and other confidential information. Getting the right legal advice before and after misappropriation of those assets is key to taking full advantage of available laws and remedies.

Members of our Non-Compete and Trade Secrets practice group are experienced in conducting trade secrets audits and advising clients on how to guard against theft and misuse.

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