

Sample Policy: Confidentiality and Nondisclosure

The following sample policies were excerpted from [The Book of Company Policies](#), published by HR Specialist, © Edit for your organization's purposes.

Sample Nondisclosure Agreement:

"The Employee understands and agrees that all books, records, documents and information, whether written or not, pertaining to the Company's business activities, including but not limited to, customers, customer lists and customer's accounts, are the confidential and proprietary property of the Company and are to be used exclusively for the benefit of the Company.

"He/she further warrants, covenants and agrees that such confidential and proprietary property shall not be copied without the express permission of the Company and that upon termination of employment with the Company, all such confidential and proprietary property and any and all copies thereof shall be immediately returned to the Company."

Sample Confidentiality Policy:

"Our customers depend on us to maintain the confidentiality of their business with us. It is vitally important that all employees recognize their duty to maintain the confidentiality of trade secrets, proprietary and confidential information and not to use such information in competition with XYZ. Trade secrets, proprietary and confidential information include, among other things, information concerning former, present and prospective customers of XYZ (including customer lists) and the affairs, operations and business activities of XYZ, which may be available to you but not to the public.

"Any disclosure or use of any trade secret, proprietary or confidential information, other than in connection with XYZ's business or as specifically authorized in writing by XYZ, could be highly detrimental to XYZ and could result in serious loss of business and damage to XYZ. You are required to hold in the strictest confidence all trade secrets, proprietary and confidential information unless you receive specific written authorization from XYZ. Trade secrets, proprietary and confidential information must be returned to XYZ upon the termination of your employment or at any other time upon request."

WHAT'S AT ISSUE:

All businesses want to safeguard trade secrets and proprietary information and maintain their customers' trust. So you will naturally want to let your employees and independent contractors know what you expect of them in this regard. Your options range from making a simple policy statement telling them what you consider confidential and how you expect them to treat such information to asking them to sign a nondisclosure agreement.

Before drafting a nondisclosure agreement, consider what you want to protect and how and why leaks are likely to occur.

Safeguarding proprietary information: Certainly you have customer lists and marketing strategies that you'd prefer to keep private. And your customers doubtless depend on you to keep information about their business confidential. You may also have proprietary production methods, recipes, research and so on that contribute significantly to your company's success.

Stopping leaks: Leaks are as likely to occur through "loose lips" as through intentional misappropriation. Your best protection against loose lips is to make it clear to employees that company information is to be treated confidentially and then follow that proscription yourself by safeguarding proprietary information from casual perusal, giving employees access to it only on a need-to-know basis and disciplining any employee who breaches your policy.

Intentional misappropriation is another matter. Here you are talking theft, presumably by a person in a position of trust who has access to confidential information. A nondisclosure agreement may help you protect your business from unfair competition by making such employees aware of both their legal obligation to protect proprietary information and your intention to use the full force of the law to enforce your policy. For additional protection, you may want to consider asking key employees to sign a noncompete agreement.

POLICY CONSIDERATIONS AND ALTERNATIVES:

- **How do you handle business information?** Do you keep certain information confidential, allowing employees access to it only when necessary? Or is the information lying around where anyone can access it? If the latter, expect to have trouble convincing a court that it is a bona fide trade secret.
- **Do you have genuine trade secrets to protect?** Be aware that the law and businesses often disagree on what constitutes a "trade secret." What you consider a secret, a court may consider general knowledge. Customer lists, for example, are seldom protected. Lawyers say courts will typically accord lists trade-secret status only if identifying the customers on the list would require extraordinary effort and the vendor expended considerable time and money over a period of many years to secure them. Therefore, if competitors could identify your customers and prospects through public sources, a judge might not bar a former employee from joining a competitor and soliciting your customers even if she had signed a nondisclosure agreement with you. Other confidential information that is unlikely to meet the judicial definition of "trade secret" includes normal business or financial information; pricing, estimating and salary data; operating plans; promotional objectives and supplier contracts, except when they have been compiled over a long period of time and at great expense.
- **Would a simple policy statement make more sense?** A nondisclosure agreement may help protect your trade secrets if you have genuine secrets to protect. But many companies don't. If yours is one of them, consider issuing a confidentiality policy statement to help safeguard sensitive information in lieu of asking employees to sign a nondisclosure agreement.

Whether you decide to draft a nondisclosure agreement, a confidentiality policy or both, be sure to define what you consider proprietary or confidential information and offer some examples. Make it clear, however, that the information covered in the agreement or policy isn't limited to those.