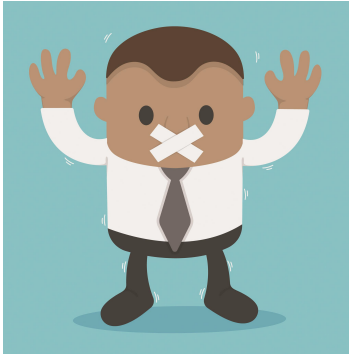


# HR lesson from DC drama: Should you require staff to sign NDAs?



The scandal de jour in Washington swirling around Omarosa Manigault Newman, a fired White House aide who wrote a tell-all book, has ignited a debate about the appropriate—and legal—use of nondisclosure agreements (NDAs) to block employees from disclosing information about a past employer.

While NDAs may help protect your organization's trade secrets if you have genuine secrets to protect, many companies don't. If yours is one of them, instead consider issuing a simple confidentiality policy that tells employees what you consider confidential and how you expect them to treat such information.

## Consider the 'Why'

Before drafting an NDA, consider what you want to protect and how and why leaks are likely to occur. Three things to consider:

1. **Safeguarding proprietary information:** You likely have customer lists and marketing strategies you'd prefer to keep private. And your customers depend on you to keep their information confidential. You may also have proprietary production methods, recipes, research and so on that contribute significantly to your company's success.
2. **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 yourself by safeguarding proprietary information from casual perusal. Give employees access to it only on a need-to-know basis and discipline any employee who breaches your policy.

3. **Theft:** An NDA 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.

So does your company information need nondisclosure protection? Answer these questions to see if you should have workers sign NDAs (the more affirmative answers, the more legitimate an NDA may be.)

- Is knowledge of the information greatly limited outside of the company?
- Is knowledge of the information purposely limited even within the company?
- Does the company take reasonable measures to protect the secrecy of the information?
- Is the information very valuable to the company and its competitors?
- Did it cost a great deal in time, money or effort to develop the information?
- Would it be hard for others to obtain or produce the information?

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

## **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 (from a bank)**

"XYZ's business is based on information. Our customers depend on us to know the financial services business, provide services that reflect that knowledge and 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 pecuniary 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."