

What's the Minnesota law on confidentiality agreements? Are they enforceable?

Q. Our company works with proprietary and confidential information. We would like to protect ourselves from having that information get disclosed to competing companies. Are confidentiality agreements enforceable? If so, must they be signed at the start of a new employee's job in order to be valid?

A. Companies have a right to protect their confidential and proprietary information. You can do that by having employees sign written confidentiality agreements.

Although it is common to include a confidentiality provision in a broader agreement that also contains noncompete provisions, the use of stand-alone confidentiality agreements is fairly common.

Under Minnesota law, there is one significant difference between confidentiality agreements and noncompete agreements: Confidentiality agreements that an employee signs even after employment has already begun are legally enforceable without providing additional benefit to the employee (such as a monetary payment or promotion).

All employees in Minnesota—regardless of whether they have signed a confidentiality agreement—are subject to the Minnesota Trade Secrets Act. That statute makes it unlawful to take, use or disclose confidential information.

It's still advisable to use confidentiality agreements for several reasons. First, confidentiality agreements can protect a broader range of information. (The definition of information protectable under the Trade Secrets Act is demanding.)

Second, by specifically identifying what information is considered to be confidential, these agreements put employees on better notice about which information is protected. That makes it less likely that they will take or improperly disclose such information.

Third, being able to point to the existence of a confidentiality agreement increases the employer's chance of success if it has to sue an employee for the misappropriation of confidential information.

If you decide confidentiality agreements might be useful to you, carefully draft the agreement as specifically as possible. Spell out what information is being claimed to be confidential. Overly broad confidentiality agreements—stating, for example, that *all* of a company's information is confidential—aren't as helpful as ones that specify the types of confidential information.