



Trade Secrets Act from employment law perspective

Employment Update

The new Trade Secrets Act ("Act") has been passed in Finland to incorporate the provisions of the Trade Secrets Directive ((EU) 2016/943) and to transfer the existing protection of trade secrets conditions from under the Unfair Business Practices Act. The new Act replaces the Unfair Business Practices Act conditions on the unlawful use of trade secrets and technical specifications. It provides harmonised definitions at the EU level for trade secrets and for their lawful and unlawful acquisition, use and disclosure.

What is a Trade Secret?

In order for information to be considered a trade secret, it must fulfill three criteria: 1) must be secret information, meaning that information cannot be generally known amongst or readily accessible to persons. 2) must have commercial value in business activity, but the company does not necessarily have to be being already exploiting the information or secret. The potential for an owner to commercially benefit from information is sufficient 3) the owner of a trade secret must take reasonable steps to keep the information secret. To meet this requirement, companies must have proper non-disclosure agreements in place, and confidentiality provisions in all relevant commercial and employment agreements. Merely the intention to keep the information secret is not enough to fulfill this criteria.

What is permitted and forbidden?

Naturally, the law prohibits stealing trade secrets. Further, the law prohibits unlawfully acquiring a trade secret by copying, imitating or observing the documents, objects, materials or electronic files of the trade secret's owner. However, the acquisition of trade secrets if they are invented or created independently, or by reverse engineering trade secret from a product on the market is allowed.

New whistleblowing rules

The new law includes a whistleblowing provision, according to which a person (e.g. an employee) is allowed to disclose a trade secret in order to reveal a malpractice or illegal activity, so long it is done to protect the public interest and the person has significant reasons to reveal. However, an employee has a primary duty to use a company's internal whistleblowing channel if such exists. Thus, an employee cannot reveal the trade secret in public as long as the company has established and maintains a proper internal channel for whistleblowers. An employee can, however, go public if the malpractice or illegal act involves his superior or the management body.

Finally, an employee can reveal trade secrets to an employee representative if it is necessary for the representative to perform his duties, such as disputes concerning compensation on employee inventions or termination of employment in relation to misuse of trade secrets.

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