

New Jersey Trade Secrets Act: Same Package, Different Label

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Earlier this month, Governor Christie signed the New Jersey Trade Secrets Act. While this is a new statute on the books, it is fundamentally the same law that existed prior to the law being enacted. Essentially, the Trade Secrets Act codifies existing New Jersey law in the employment arena. This law prohibits employees from misappropriating trade secrets by improper means. Although this may sound simple, it is vital to understand how each of the three relevant terms are defined: misappropriate, trade secrets, and improper means.

What is meant by the term misappropriate?

The term “misappropriate” means:

1. Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or
2. Disclosure or use of a trade secret of another without express or implied consent of the trade secret owner by a person who:
 1. used improper means to acquire knowledge of the trade secret; or
 2. at the time of disclosure or use, knew or had reason to know that the knowledge of the trade secret was derived or acquired through improper means; or
 3. before a material change of position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired through improper means.

What is meant by the term “trade secret”?

The term “trade secret” means: information, held by one or more people, without regard to form, including a formula, pattern, business data compilation, program, device, method, technique, design, diagram, drawing, invention, plan, procedure, prototype or process, that:

1. Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
2. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

What is meant by the term “improper means”?

The term improper means is defined as: the theft, bribery, misrepresentation, breach or inducement of a breach of an express or implied duty to maintain the secrecy of, or to limit the use or disclosure of, a trade secret, or espionage through electronic or other means, access that is unauthorized or exceeds the scope of authorization, or other means that violate a person’s rights under the laws of this State.

If litigation is commenced, is the trade secret made public?

No, the trade secret will remain confidential under the appropriate Court rules. In addition, the Court can require that the parties enter into a confidentiality order and have certain documents marked attorneys’ eyes only.

What may an employer seek when an employee or former employee violates the Trade Secrets Act?

Employers may seek an injunction for both actual and threatened misappropriation of trade secrets. Damages may include the actual loss caused by the misappropriation or the imposition of a reasonable royalty for use of the trade secret. In cases of willful and malicious misappropriation, the employer may be able to recover punitive damages of twice the award for the actual loss. In certain circumstances, the prevailing party (employer or employee), may be able to recover attorneys’ fees and

the reasonable costs for the services of an expert.

The New Jersey Trade Secrets Act has provided clarification of the current state of the law in New Jersey. New Jersey has joined almost all other states in providing clear protections for trade secrets of employers. If you believe one of your employees has threatened or has misappropriated one of your trade secrets, contact counsel immediately.