



Florida EMPLOYMENT

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LawLetter

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TRADE SECRETS

No deal for car dealership manager who used company information

Employees stealing valuable company information and sharing it with competitors can be an employer's worst nightmare. In many ways, current technology has made it easier for employees to gain access to sensitive information and then transfer it to themselves or others in clandestine ways. The following case alerts us to this very real threat and provides food for thought on how to handle and prevent such employee theft.

Facts

Garrick Hatfield had been the general manager of a Mercedes-Benz dealership owned by AutoNation, Inc., for three years when he began negotiating with a competitor dealership for a similar position. (If the names sound familiar, that's because we reported on a noncompete order in this litigation in March. See "Does your noncompete apply to employees outside Florida?")

A couple of weeks before his resignation, Hatfield packed documents obtained at a recent sales conference into a box and took them home. He also downloaded 26 computer files containing all pertinent information needed to start up a car dealership as well as inside information regarding the dealership's sales, employee pay and incentives, and internal business development programs. On the same day he downloaded that information to a disk, he also sent a series of e-mails to his personal account.

The dealership sought an injunction (court order) against Hatfield to protect its misappropriated trade secrets and to mitigate the harm their disclosure would cause. The trial court granted an injunction requiring Hatfield to (1) return all materials he misappropriated from the dealership, (2) refrain from disclosing any information about

the dealership to any person or entity, (3) refrain from engaging in selling, leasing, or servicing any new or used vehicles or parts, either wholesale or retail, until February 1, 2006, and (4) make available for the dealership's inspection the laptop computer to which he sent its sensitive information, with the permission to have his own expert available to protect his interests.

In affirming the trial court's injunction, the appeals court relied on the Florida law dealing with trade secrets and cases concerning temporary injunctions. Florida law provides for temporary injunctions for actual or threatened misappropriation of trade secrets to "eliminate commercial advantage that otherwise would be derived from the misappropriation." For a temporary injunction to be awarded, four elements must be shown: (1) irreparable harm, (2) a clear legal right, (3) an inadequate remedy at law, and (4) that the public interest will be served.

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The appeals court found all the elements were met easily because the documents included information not available to the general public and contained highly sensitive information about company sales and operations, including information on internal programs to develop business. The irreparable harm element was satisfied because the dealership could only speculate about the magnitude of the ramifications of the disclosure. In other words, the harm was unquantifiable. And certainly, since the legislature deemed the protection of trade secrets important enough to enact legislation protecting against their misappropriation, the dealership demonstrated it had a clear legal right to protect its secrets and the public interest would be served. Hatfield therefore was required to comply with all the trial court's mandates. *Hatfield v. AutoNation, Inc.* 2006 WL 2739004 (Fla. 4th DCA, September 27, 2006); Florida Statutes, sec. 688.01 et seq.

A lesson learned in how to make lemonade out of a lemon

The general manager may have tried to pass off a lemon to his former employer in this case, but the dealership's resolution to mitigate any possible damage set a powerful message to ward off any further or future employee theft of information. Although no measures can be taken to completely alleviate the risk of employee theft of this kind, certain preventive measures can be taken to reduce such occurrences.

You should address trade secrets and other sensitive employer information in clear employment policies and mandate employee signatures on the policies. The policies need to include prohibitions against the transfer of information to nonemployer computers as well as other technological means of transferring information. Although it may be easier for employees to steal information, a lemon by any other name is still a lemon. Employers need to be vigilant in ensuring that sensitive information isn't disbursed. That may include an investment in software that can monitor such employee activities. ❖

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