Kilpatrick

5 KEY TAKEAWAYS

Protecting Your IP When People are Coming and Going

Kilpatrick's Katie Barton, Nena Bains, and Destiny Williams recently presented a webinar in partnership with the Association of Corporate Council on the topic of **"Protecting Your IP When People are Coming and Going."**

Protecting your IP during employment isn't limited to non-disclosure agreements at the time of hire. It starts before you hire new employees and continues even after they leave your company. The webinar covered steps employers can take to limit IP leakage when interviewing and onboarding applicants and new hires, entering into joint development agreements, notifying third parties of former employees' contractual obligations, and exiting employees. The speakers also addressed day-to-day practices and considerations to protect your IP before there are any suspicions it could be compromised.

Key takeaways from the presentation include:

1

Best Practices for Interviewing and Hiring Employees: Be sure to ask candidates about their contractual restrictions with their current or former employer. Avoid soliciting confidential or proprietary information from candidates during interviews. Focus solely on their qualifications and remind them not to share details about their current or former employers' clients, strategies, or finances.

2

Proactive Review of Employment Agreements and Practices: Employment agreements should be updated to address ownership and assignments clearly. Include provisions requiring employee-inventors to execute assignments for EACH patent application and cooperate on patent prosecution and enforcement matters. Regularly train employees on protecting trade secrets and how to recognize internal and external threats to secrecy.

3

Tailored Restrictive Covenants for Protection: Non-compete, non-solicitation, and non-disclosure agreements should be customized to specific roles and balanced to ensure enforceability. Restrictive covenants must be reasonable for both the employer and employee while considering public interest. Be thoughtful about when and how to enforce restrictive covenants, but don't sit on your rights.

4

Legal Risks of Hiring Employees with Proprietary Knowledge: Hiring individuals with knowledge of trade secrets from their previous employers can lead to legal consequences such as misappropriation of trade secrets, breach of contract, or tortious interference. A handful of states will apply the inevitable disclosure theory.

5

Exit Processes and Training for Departing Employees: Conduct exit interviews to remind employees of their confidentiality obligations and ensure all company property is returned.

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