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# The 'George Costanza Defense' to Stealing Trade Secrets

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The unfortunate reality is that your employees present one of the greatest threats to your company's proprietary information and trade secrets. Just by working at your company, they have gained skills and knowledge about your industry. As a result, they are marketable to other companies in your industry, including competitors.

When the time comes for one of your employees to leave your company — whether voluntarily or otherwise — there's a good chance they will want to take with them documents and information that they think will be of help at their next job. Even worse, many employees start this process as soon as they decide to look for a job, long before you have any idea that they are thinking about leaving.

Sometimes, employees get caught red-handed. When they do, they come up with interesting excuses. Recently, media reports discussed an FBI investigation into alleged trade-secrets theft at one of the large American automakers. An engineer admitted planting listening devices in meeting rooms. These devices recorded meetings, including ones that the engineer did not attend.

The engineer's lawyer gave quotes to the media, essentially saying that his client used the devices to help her take notes. He pleaded ignorance on her behalf. She apparently did not know that it was improper to plant hidden recording devices in meeting rooms and leave them there to record meetings she did not attend.

I call this the "George Costanza defense" to trade-secret theft. If you are a Seinfeld fan, you might recall the episode when George was caught having sex with a cleaning woman on his desk. When confronted by his boss, he replied, "Was that wrong? Should I not have done that? I tell you, I gotta plead ignorance on this thing

because if anyone had said anything to me at all when I first started here that that sort of thing is frowned upon."

Mr. Lippman, his boss, responded with a simple, "You're fired."

In my practice, I have encountered a similar excuse. When one of my clients discovers that a former employee is violating a noncompete agreement, often the first step is to send a cease-and-desist letter. On multiple occasions, I have heard back immediately from the former employee, saying, "I forgot I even signed the noncompete! I'll stop working for your competitor immediately."

There's a lesson here. You need to educate your employees about how proprietary information is handled. The best practice is to implement a formal trade-secrets policy that governs exactly how employees are required to handle the company's sensitive information and documents. Of course, employees need to be trained to adhere to this policy.

Similarly, you should remind departing employees about their legal obligations. When anyone subject to a noncompete or similar agreement leaves your company, have this person acknowledge in writing that he or she is bound by the document. To implement similar procedures, consult with an attorney with experience in handling these issues.

Following these relatively simple steps can ensure that your employees know that the Costanza defense is no excuse for stealing proprietary information.