

# The Legal Strategist

S. BARRETT P.C.

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TEXAS ESOTERIC FACTS

Most employers worry that former employees will improperly use confidential information and trade secrets that they obtained during their employment, usually by providing it to a competitor or by creating a new competing company. Employers, therefore, want and need the ability to immediately restrain former employees from disclosing, or even simply possessing, the employer's confidential information.

♦ In Texas, it is illegal to take more than three sips of beer at a time while standing.

The Feature Topic is a cursory review. If you would like more information on this, or any other topic previously covered in our newsletter, which can be viewed on [The Legal Strategist](#) tab of my web site, please contact my office at 713.526.1883.

Scott Barrett

♦ The coldest recorded temperature in Texas occurred in Spearman in Jan. 1959; it was -22°. The hottest occurred in Seymour in Aug. 1932; it was 120°.

FEATURE TOPIC: **PROTECTING CLIENT LIST FROM EX-EMPLOYEES**

♦ Amarillo has the world's largest helium well

One of a company's biggest asset is its client list. What happens if your star sales rep leaves your company and starts working for your biggest competitor or for themselves? Former employees know your business, they know your customers and they know how to best adapt the two to one another. This combination can make for a dangerous weapon if the employee leaves your company and decides to use their knowledge elsewhere. Understanding how to prevent an exodus of clients at the hands of a former worker can prevent big losses.

## Non-Solicitation Agreement

Consider asking new hires and existing employees to sign a non-solicitation agreement as a requirement of accepting a position with your company. These agreements state that an employee is not to contact any clients of your company for a certain period after retirement, quitting or dismissal. While such agreements do not provide long-term protection from client-poaching, they will buy some time for you to lock your clients down should the person who normally deals with them leave the company.

If you decide to go the non-solicitation agreement route, you will be protected against your former employee if they makes contact with any of your clients. You will not, however, be protected against any of your clients contacting the former employee. To protect yourself further, add a clause to the agreement which states that for a given period no employee can communicate or deal with clients of the company no matter who initiates the contact.

## Protecting Confidential Information Without a Non-Solicitation Agreement

A claim for breach of a non-solicitation agreement is not, however, the only basis upon which to seek injunctive relief. Several alternative options are found under statute or in the common law and can provide a basis for seeking injunctive relief against a former employee who is in possession of, and may be disclosing, confidential information

*Common law duty not to disclose confidential information.* Former employees may not use for their own advantage and to the detriment of former employers confidential information or trade secrets acquired by them during employment.

*Misappropriation of trade secrets.* Common law cause of action allowing the employer to seek redress against a former employee who obtained a trade secret and used or disclosed the trade secret in breach of the confidential relationship.

*Conversion.* Common law cause of action allowing the employer to seek redress against a former employee who "wrongfully exercised dominion or control" over the employer's property, including confidential information such as customer lists or trade secrets.

*Texas Theft Liability Act ("TTLA").* Statutory cause of action allowing the employer to seek redress against a former employee for intentionally depriving the employer of its ownership or possession of its trade secrets.

If you would like more information on how to protect your customer lists, please contact [Scott Barrett](#) to set up a consultation.