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PROTECTION OF TRADE SECRETS IN A PANDEMIC

Although the protection of trade secrets during the pandemic may not be the most pressing issue facing employers, nevertheless the failure to address the issue could have catastrophic consequences. The virus has led to many employees working remotely, often using personal computers. That fact, coupled with the ease with which information can be transmitted electronically, poses real risks for employers.

First, the basics – a trade secret can only be protected if the employer takes reasonable steps to protect it. In Connecticut, the seminal case is *Elm City Cheese Company v. Federico*. *Elm City Cheese*, which was owned by Richard and Suzanne Weinstein, made Italian style cheese that it sold to three customers that used its cheese as fillers for their cheese. Federico, an accountant by training, had a long standing social and professional relationship with the Weinstains. He not only served as the company's accountant, he also served as the Weinstains' personal accountant. After one of the Weinstains was diagnosed with a serious illness, they turned much of the operations of the company to Federico, who had become an officer of the company. Through his work as the company's accountant, Federico learned all about the financial affairs of the company, including its supplier and their prices. As he handled the operations of the company, he learned about the process used by the company to make the cheese, as well as the identity and needs of its three customers. The company did not market or sell to the public.

For reasons that were disputed in the trial, the relationship between the Weinstains and Federico deteriorated. While still employed by the company, Federico made plans to and actually began competing with the company. The company sued, claiming, in part, that Federico had stolen its trade secrets.

The Supreme Court concluded that although cheese making is certainly not a secret, the process used by the company was. That process included its suppliers and the needs of its customers. But finding that the process used by the company was 'secret,' that is not generally known in the trade or industry, did not mean that it was a trade secret protected by the law. In addition to being secret, the employer must take reasonable steps to protect the information.

Federico argued that the company did not take reasonable steps to protect the information and, therefore, it was not a trade secret. He noted that the company did not require him to sign a nondisclosure agreement. Nor did the company issue any policy regarding the protection of its confidential information. And the company gave him full access to all of the information it claimed was a trade secret.

But the Supreme Court rejected Federico's argument. The standard is whether the company undertook "efforts that are reasonable under the circumstances to maintain [] secrecy." As the court noted, the Weinstains had a special relationship with Federico that extended over years. He had access to all of their financial information as their

accountant and had access to the operations of the company as an officer of the company. Under the circumstances, the Supreme Court concluded that the company had taken reasonable steps to protect its trade secrets.

Elm City Cheese Company v. Federico teaches us although there is no magic checklist of steps an employer must take to ensure that its trade secrets are protected, it must take reasonable steps. It would seem that if an employer is permitting its employees to work remotely with confidential and proprietary information, it would have to inform those employees that the information is a trade secret and that its use is limited to the interests of the employer. In short, at a minimum an employer should notify – or remind – every employee working remotely of its confidentiality policy.

If you have any questions about this or any other employment issue, please feel free to contact **Bernard E. Jacques** at bjacques@mdmc-law.com.

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