

Trade Secret and Intellectual Property Audit Checklist

Overview

<input checked="" type="checkbox"/>	Action Item	Notes
<input type="checkbox"/>	Trade Secrets	<p>Consider the following when identifying your company's trade secrets:</p> <ul style="list-style-type: none"> Is the information/process secret? Is the information/process valuable? Is the information/process known in the industry? Is the information/process obvious to others? <p>Examples of Trade Secrets (this is a non-exhaustive list):</p> <ul style="list-style-type: none"> Formulas Processes Specifications and Methods of Production Customer Lists Price Lists Business Plans
<input type="checkbox"/>	Intellectual Property	<p>The following types of intellectual property may be owned by your company:</p> <ul style="list-style-type: none"> Patents (<i>Patent Act</i>, RSC 1985, c P-4) Copyright (<i>Copyright Act</i>, RSC 1985, c C-42) Trademarks (<i>Trademarks Act</i>, RSC 1985, c T-13) Industrial Designs (<i>Industrial Design Act</i>, RSC 1985, c I-9)

Identifying Trade Secrets and Intellectual Property Rights

<input checked="" type="checkbox"/>	Action Item	Notes
<input type="checkbox"/>	Inventory	<ul style="list-style-type: none"> Is there a record of all the trade secrets owned by the company? Is there a record of all the of intellectual property owned by the company? (e.g. patents, copyright, trademarks, industrial designs) How often is a review performed to update the list of trade secrets/intellectual property owned by the company? For trade secrets, how often is a review performed to update the categories of information that the company considers a trade secret?
<input type="checkbox"/>	Company Policies and Procedures	<ul style="list-style-type: none"> Is there an individual employee or group responsible for identifying and gathering trade secrets/intellectual property rights? Are there procedures or policies in place that identify what information the company considers a trade secret to help employees identify trade secrets? Are records maintained of all documents evidencing or reflecting the value of all trade secrets/intellectual property rights?

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Security

<input checked="" type="checkbox"/> Action Item	Notes
<input type="checkbox"/> Storage	<ul style="list-style-type: none">Are trade secrets labelled as secret materials?What is the primary location where trade secrets are stored?Are back-up copies of the trade secrets kept? If so, where are they located?For any trade secrets stored on a computer, is the computer password-protected?Are security measures in place to protect against internet security threats? (e.g. encryption, firewall, file-lock, anti-virus, anti-spam, anti-spy and intrusion detection systems)Are policies in place for the destruction of trade secrets? (e.g. shredding, destruction of computer disks)
<input type="checkbox"/> Sharing with Third Parties	<ul style="list-style-type: none">Are there clearly defined circumstances under which trade secrets will be shared with third parties?Are there security measures in place to safeguard against unwanted disclosure of trade secrets to third parties?Are records kept of any trade secrets that are disclosed to a third party during the course of a business relationship?Are third parties required to agree, in writing, to non-disclosure agreements explaining that they are not to disclose any trade secrets that may be shared with them beyond what is required for legitimate business reasons?Are procedures in place to ensure that any trade secrets disclosed to third parties during the course of a business relationship are returned at the end of the relationship?

Employees, Trade Secrets and Intellectual Property Rights

<input checked="" type="checkbox"/> Action Item	Notes
<input type="checkbox"/> Employee Education	<ul style="list-style-type: none">Are employees educated about the kind of information that is considered a trade secret (so that they can protect this information accordingly)?Are new employees provided with an orientation about the company's trade secret policies, and the employee's responsibilities under these policies?Are employees updated on changes to policies governing trade secrets?
<input type="checkbox"/> Employment Agreements	<ul style="list-style-type: none">Are employees required to agree, in writing, to confidentiality agreements with respect to trade secrets?Are employees required to agree, in writing, to non-compete agreements with respect to trade secrets?Are employees required to agree, in writing, that they have no ownership to any trade secrets/intellectual property they develop in the course of their employment? And that ownership lies with the company?Are employees required, as per their employment agreement, to give notice of new employment outside the company so that any threat of misappropriation of trade secrets or misuse of intellectual property can be monitored when the employ leaves?Are employees required to agree, in writing, that they acknowledge they have a duty to protect the company's trade secrets after they have left the employ of the company?
<input type="checkbox"/> Development of Trade Secrets and Intellectual Property	<ul style="list-style-type: none">Are records kept reflecting how and when trade secrets/intellectual property rights were developed?Are employees required to agree in writing that they will not use or reveal any third party's proprietary information in developing trade secrets within their job?Are employees required to agree in writing that they will not use any third party's intellectual property without authorization in developing intellectual property within their job?Is a review performed to substantiate an employee's claim to ownership of information used in connection with the development of the company's trade secrets?Is a review performed to substantiate an employee's claim to ownership of intellectual property used in connection with the development of the company's intellectual property?

Misappropriation of Trade Secrets or Intellectual Property

<input checked="" type="checkbox"/> Action Item
<input type="checkbox"/> Are there policies in place to allow employees to report any perceived misappropriation of trade secrets or intellectual property?
<input type="checkbox"/> Are there steps in place to respond to perceived misappropriation and threatened misappropriate of trade secrets and intellectual property?

For more information about how Osler can help your organization, please contact:

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