

How to Protect Trade Secrets: Taking Reasonable Efforts to Maintain the Secrecy of Information



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How do you protect trade secrets? You take reasonable efforts to maintain the secrecy of the information. As we have outlined in prior installments of this series, taking reasonable efforts to maintain secrecy is a key issue in answering questions such as whether customer/client lists are [protectable trade secrets](#) and whether other various items can be [considered protectable trade secrets](#).

This is often a central issue in Arkansas cases because the Arkansas Uniform Trade Secrets Act requires that reasonable efforts be made to maintain the secrecy of a trade secret. The statute does not provide more detail on what is meant by *reasonable efforts*, however there are reported cases that provide some guidance.

Based on our experience in unfair competition litigation and based on our reading of the case law where courts have analyzed trade secrets in Arkansas, we often recommend that clients do the following to increase the chances that a court would later help enforce the secrecy of trade secrets:

- Require employees to sign confidentiality agreements.
- Label documents containing trade secrets as "CONFIDENTIAL."
- Password protect computer files containing trade secrets.
- Store trade secret information behind firewalls using best IT practices.
- Destroy copies of documents containing trade secrets after use.
- Limit access to facilities containing trade secret information.
- Install proper signage in areas containing trade secrets.
- Keep trade secret information under lock and key.

The above are possibilities, and there is no legal requirement that a business must do all of those things to ensure the protection of trade secrets. While there is no one-size-fits-all approach when it comes time to protecting trade secrets, the past instances in which Arkansas courts have had the opportunity to weigh in on the subject provide helpful guidance. We often find ourselves consulting with clients about the specific needs of their businesses, and we are often able to tailor the demands of the law to the needs of each situation to arrive at a strategy that will be enforceable in court with the least amount of burden on a business. Implementing the above suggestions can be costly, and we recognize that in some instances this could become more costly than what would be lost if the trade secrets were later disclosed. When clients seek our advice about protecting trade secrets, an important part of our counseling includes weighing the costs and benefits of taking the above listed actions, and devising a strategy with a client to balance the sometimes inevitable tradeoff between risk and cost while still meeting the goals of the client.