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“Tip of the Month”

Terminating Employees? Is Your IP at Risk?

Whether an employee quits or is terminated by the company, one critical issue that is often overlooked is the long term protection of intellectual property assets. This issue involves identification, transfer and loss of intellectual property assets. Because intellectual property assets are intangible, failure to identify and document these assets is a common oversight. These assets may include customer lists, vendor lists, inventions conceived by the employee, materials written by the employee, company know-how, and trade secrets.

A terminating employee may take intellectual property assets either intentionally or unintentionally. The employee may remove your company’s property by electronic means such as electronic file transfer or by physically removing paper copies of certain tangible items such as customer lists, vendor lists, financial or personnel data, or other confidential materials. The employee may also take information in an intangible form and later reproduce or use such information for the employee’s benefit after termination. Additionally, the employee may have information or knowledge that has value, but has not yet been disclosed to the company.

The company may take several steps to protect its intellectual property assets. The company should take inventory of all documentation and electronic information that may contain corporate intellectual property. Does the company have access to all employee-related electronic records, corporate documents and notebooks? Does the employee work from home or take corporate assets out of the office? The company must have a system in place that ensures that duplicates of those assets remain in the corporate facilities. In addition, the company should have policies in place that require employees to document all inventions and concepts for inventions in invention notebooks.

Regarding electronic loss, electronic access for terminating employees should be curtailed immediately prior to termination or closely monitored in accordance with company computer policies. This presupposes that the company has computer policies in place that permit monitoring of electronic transmissions. This is important not only for terminating employees but also as a standard practice to protect company intellectual property assets and confidential information.

The company should educate the terminating employee as to the proper treatment of intellectual property assets. For instance, the company should clarify what assets belong to the company and what rights the employee has to use information that he or she was exposed to as part of the employee’s employment. This is best done through the use of an exit interview with the employee. The exit interview, which can play a critical role in protecting the company’s intellectual property and confidential information, provides the company the opportunity of a final discussion with the employee to educate the employee about company assets.

If you have any questions intellectual property asset protection, please give us a call at 668-1971 or contact us through the internet at *Meslaw @ aol.com*.

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