

# Confidentiality Agreements

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CONFIDENTIAL

Confidentiality agreements, also known as secrecy agreements or nondisclosure agreements, are vital contracts for employers seeking to protect secret information. These documents are often used when companies have secret processes or products that are in the works prior to licensing. For many technology-based companies, confidential information is one of their most valuable assets.

## Functions of a Confidentiality Agreement

Confidentiality agreements serve several primary functions for employers:

- Protect sensitive information from being disclosed to others. If secret information is revealed to competitors, the company has reason to claim a breach of contract and can seek damages from the employee.
- Prevents the forfeiture of patent rights. Federal law prohibits the public disclosure of inventions and such a disclosure is considered a breach of patent rights.
- Define exactly what information can and cannot be disclosed to others. Confidentiality agreements specifically outline what information is to be kept confidential – ranging from data, know-how, prototypes, computer software, test results, engineering drawings, tool, systems, etc. Confidentiality agreements also protect information concerning mistakes that a company made while developing a product or process. By obtaining this information, a competitor can bypass setbacks and potentially have a leg up on the competition. Therefore, information about mistakes is just as vital as information about successfully completed projects.

## Exclusions

Most confidentiality agreements exclude certain information from being classified as secretive. Within an agreement, the employer should outline a definition for this information as well as the information being protected. The following items are not typically considered confidential:

- Information that the employee had prior to receiving it from the employer.
- Information that becomes public knowledge not by way of the employee revealing it.
- Information that the employee learns from a third party.
- Information that was public knowledge before the employee received the information from the employer.

- Information independently created by the employee.

**Other Considerations:**

- Confidentiality agreements should be required for all employees who have access to company secrets.
- Employers should impress the importance of confidentiality upon all new employees and should remind exiting employees of secrecy agreements that they signed.
- Employers should not allow employees access to confidential information before signing a confidentiality agreement.
- Confidentiality agreements must establish a specific time period for which the document is valid regarding how long the information should be kept in confidence.
- Since state laws differ, have your legal counsel review your confidentiality agreement before using a canned agreement.

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