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Simple employee non disclosure agreement template

If your business has sensitive information that needs protecting, an employee confidentiality agreement may be the best way to preserve privacy and ensure the integrity of your business's data. If you've ever been to the doctor, you probably take for granted one of the most famous confidentiality agreements of all time: the HIPAA law which protects the privacy of the doctor-patient relationship. In other industries, these agreements are used to protect assets, intellectual property, customer information and more. Here, we'll explore the intricacies of these vital agreements. We've even included a printable confidentiality agreement below to help get you on the right track. Download Free Non-Disclosure Template What is an employee confidentiality agreement? A confidential disclosure agreement, also called a confidentiality agreement or CDA, is a legal agreement which prohibits employees from disclosing certain information about a company. It is a permanent agreement, which means a signed confidentiality agreement remains valid after employment has ended. For some businesses, including a confidentiality clause in an employee's contract will suffice. For other businesses, a CDA agreement will be a separate document with various provisions and clarifications. Ideally, businesses will ask a new hire to sign confidentiality agreements before their first day. If asking tenured employees, businesses should pair the request with a bonus or contract renewal. Employee non disclosure agreements and non circumvention agreements An NDA, a non disclosure agreement, serves more or less the same function as a confidentiality agreement. An NDA agreement is more commonly used for transactional arrangements, such as those between vendors and buyers, while CDAs tend to be more common in employment contracts. However, both agreements are used to protect sensitive information. In the UK, these pacts are often known as non circumvention agreements. NDAs can apply to one, two, or three parties. A one-way NDA, also called a unilateral NDA, would be more typical for an employer-employee relationship. This agreement assumes only one party (the employee) will receive and thus be responsible for protecting sensitive information. A two-way NDA, also called a mutual NDA prohibits both parties from disclosing information about the other. A 3 way nda, or multilateral NDA will involve 3 or more parties, at least one of which expects to reveal sensitive information. Chances are a unilateral NDA should do the trick for a business hoping to keep information private. Our employee NDA template below should provide a good confidentiality or non disclosure agreement example. Why have a confidentiality agreement? Employees necessarily need to know a lot about the businesses they work for. A confidentiality contract is vital to protecting the company's financial information, customer data, and intellectual property from incidental or malicious exposure. When they sign a confidentiality agreement form or basic non disclosure agreement, employees acknowledge that disclosing sensitive information is in breach of their contract and punishable by law. Without such an agreement, companies may have a hard time incentivizing employees not to share confidential information or prosecuting those who divulge company secrets. In short, a company has little to lose and a lot to gain in implementing a confidentiality agreement. Businesses should err on the side of caution with a CDA. How does a confidentiality agreement work? Each employee confidentiality agreement will be tailored to fit the business's needs. The language should be very specific what information is protected, as overly broad confidentiality agreements will not be enforceable. It is also important that the agreement be specific about the repercussions for violating the terms. How long does a confidentiality agreement last? In most cases, the information covered by a confidentiality agreement will be protected until it becomes common knowledge or is made public. The employee can also be released from their obligation by the company. What can be covered by a confidentiality agreement? A CDA or NDA can be used to protect any information the employer wishes to keep private: secret recipes, manufacturing processes, marketing strategies, client or sales contacts lists, or customer data. Employees should be as specific as possible when detailing private information. What happens if a confidentiality agreement is breached? If an employee does break a signed agreement, the business can take steps to enforce the remedies listed in the document. With the help of an attorney, businesses can take escalating steps such as sending a "cease and desist" letter, filing a restraining order, or finally, filing a lawsuit for damages. What to include in a confidentiality agreement A confidentiality agreement or non disclosure contract does not have to be complicated or filled with legal jargon. It need only cover the key information in a clear and straightforward manner. While some confidentiality agreements will contain further information, all will at least include the following: Parties: The parties to the agreement should be specified at the start of the document. The organization would be considered the "disclosing party" and the employee would be considered the "recipient" of sensitive information. Protected information: What information will be covered by the agreement? This section should detail exactly what information needs to be kept classified. Blanket statements barring the employee from disclosing "all" or "any" information will not hold up! Exclusions: What situations are not covered by the agreement? List instances in which an employee would be permitted to disclose "confidential information" without violating the agreement, such as if the information has already been made public. Bear in mind that employees can be subpoenaed or legally compelled to reveal confidential information. Term: How long will the agreement last? It can be a definite term agreement, which will eventually expire, or employers may obligate employees to keep the information confidential indefinitely, which is to say, forever. The term should be clearly specified to protect the organization. Consequences: What happens when the employee non disclosure agreement is breached? Because of the damages which may result from a breach, businesses should clarify their intention to pursue legal remedies such as an injunction or lawsuit. Additional provisions: Businesses may wish to specify which state's laws will govern any disputes, or what materials employees need to return or dispose of if they should leave. Some employers may also include other restrictive covenants such as a non-solicitation agreement, which prohibits former employees from poaching their past clients or colleagues, or non-compete agreements. Whether these are enforceable will vary by state law, so employers are advised to review local policy. Free Download Employee Confidentiality Agreement Template. Further considerations for confidentiality agreements Getting a confidentiality agreement or non disclosure form signed shouldn't be a headache. Follow these best practices to protect both your confidential information and employment relationship. Give employees sufficient time to review the confidentiality agreement. This will make sure they clearly understand what is being asked of them. Use an online non disclosure agreement with a digital signature to minimize inconvenience and ensure nothing is lost or misplaced. If using a printed version, make sure to get two copies- one for the employee and one for the business. If possible, have new hires sign before they start working. Make sure to periodically remind employees of their obligations, perhaps in annual team meetings, to avoid any slip-ups. Remember that your confidentiality needs may change over time and make sure to keep the agreement up to date and reflective of your company's values. A well-executed employee confidentiality agreement will keep your company, and its future, secure. Safely & securely store confidentiality agreements with Factorial HR. Written by Valerie Slaughter The sole purpose of the employee non-disclosure agreement is to make clear to an employee that he or she may not disclose your trade secrets without permission. Lawyers recommend that employers use such agreements prior to an employee starting work. If the agreement is with a current employee, we recommend that you give the employee something of value over and above normal salary and benefits. Employee NDA Template - Adobe PDF, Microsoft Word (.docx)Independent Contractor NDA - Otherwise known as a "1099 contractor" referring to the tax status of the individual. Much like the employee NDA, allows a company to protect its proprietary information while hiring the services of an independent contractor. Table of ContentsUnder the Defend Trade Secrets Act, employers are now required to include a Notice of Immunity provision in any contract or agreement with an employee that governs the use of a trade secret or other confidential information. The notice should also be included in agreements for independent contractors as well. An employer who fails to include the provision is prohibited from recovering exemplary (double) damages and attorney fees from the employee or IC. The failure to include the provision does not prevent filing in federal court under the DTSA. Employee NDA Sample This agreement (the "Agreement") is entered into by _____ ("Company") and _____ ("Employee"). [Alternative 1] In consideration of the commencement of Employee's employment with Company and the compensation that will be paid, Employee and Company agree as follows: [Alternative 2] In consideration of: [Choose one] - the amount of \$ _____ - options to purchase shares of Company's stock - the receipt and sufficiency of which is acknowledged, the parties agree as follows: 1. Company's Trade Secrets In the performance of Employee's job duties with Company, Employee will be exposed to Company's Confidential Information. "Confidential Information" means information or material that is commercially valuable to Company and not generally known or readily ascertainable in the industry. This includes, but is not limited to: (a) technical information concerning Company's products and services, including product know-how, formulas, designs, devices, diagrams, software code, test results, processes, inventions, research projects and product development, technical memoranda and correspondence; (b) information concerning Company's business, including cost information, profits, sales information, and unpublished financial information, business plans, markets and marketing methods, customer lists and customer information, purchasing techniques, supplier lists and supplier information and advertising strategies; (c) information concerning Company's employees, including salaries, strengths, weaknesses, and skills; (d) information submitted by Company's customers, suppliers, employees, consultants or co-venture partners with Company for study, evaluation or use; and (e) any other information not generally known to the public which, if misused or disclosed, could reasonably be expected to adversely affect Company's business. 2. Nondisclosure of Trade Secrets The Employee shall keep Company's Confidential Information, whether or not prepared or developed by Employee, in the strictest confidence. The Employee will not disclose such information to anyone outside Company without Company's prior written consent. Nor will Employee make use of any Confidential Information for Employee's own purposes or the benefit of anyone other than Company. However, Employee shall have no obligation to treat as confidential any information which: (a) was in Employee's possession or known to Employee, without an obligation to keep it confidential, before such information was disclosed to Employee by Company; (b) is or becomes public knowledge through a source other than Employee and through no fault of Employee, or (c) is or becomes lawfully available to Employee from a source other than Company. 3. Confidential Information of Others The Employee will not disclose to Company, use in Company's business, or cause Company to use, any trade secret of others. 4. Return of Materials When Employee's employment with Company ends, for whatever reason, Employee will promptly deliver to Company all originals and copies of all documents, records, software programs, media and other materials containing any Confidential Information. The Employee will also return to Company all equipment, files, software programs and other personal property belonging to Company. 5. Confidentiality Obligation Survives Employment Employee's obligation to maintain the confidentiality and security of Confidential Information remains even after Employee's employment with Company ends and continues for so long as such Confidential Information remains a trade secret. 6. General Provisions (a) Relationships: Nothing contained in this Agreement shall be deemed to make Employee a partner or joint venturer of Company for any purpose. (b) Severability: If a court finds any provision of this Agreement invalid or unenforceable, the remainder of this Agreement shall be interpreted so as to best to effect the intent of Company and Employee. (c) Integration: This Agreement expresses the complete understanding of the parties with respect to the subject matter and supersedes all prior proposals, agreements, representations, and understandings. This Agreement may not be amended except in a writing signed by both Company and Employee. (d) Waiver: The failure to exercise any right provided in this Agreement shall not be a waiver of prior or subsequent rights. (e) Injunctive Relief: Any misappropriation of any of the Confidential Information in violation of this Agreement may cause Company irreparable harm, the amount of which may be difficult to ascertain, and therefore the Employee agrees that Company shall have the right to apply to a court of competent jurisdiction for an order enjoining any such further misappropriation and for such other relief as Company deems appropriate. This right is to be in addition to the remedies otherwise available to Company. (f) Indemnity: The Employee agrees to indemnify Company against any and all losses, damages, claims or expenses incurred or suffered by Company as a result of the Employee's breach of this Agreement. (g) Attorney Fees and Expenses: In a dispute arising out of or related to this Agreement, the prevailing party shall have the right to collect from the other party its reasonable attorney fees and costs and necessary expenditures. (h) Governing Law. This Agreement shall be governed in accordance with the laws of the State of _____ (i) Jurisdiction. The Employee consents to the exclusive jurisdiction and venue of the federal and state courts located in _____ in any action arising out of or relating to this Agreement. The Employee waives any other venue to which the Employee might be entitled by domicile or otherwise. (j) Successors & Assigns. This Agreement shall bind each party's heirs, successors and assigns. The Company may assign this Agreement to any party at any time. The Employee shall not assign any of his or her rights or obligations under this Agreement without Company's prior written consent. Any assignment or transfer in violation of this section shall be void. 7. Notice of Immunity The Employee is provided notice that an individual shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that is made (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual (i) files any document containing the trade secret under seal; and (ii) does not disclose the trade secret, except pursuant to court order. 8. Signatures The Employee has carefully read all of this Agreement and agrees that all of the restrictions set forth are fair and reasonably required to protect Company's interests. The Employee has received a copy of this Agreement signed by the parties. Employee Signatures _____ Print Name _____ Date _____ Company Signatures _____ Print Name _____ Date _____ Introductory Paragraph Fill in the name of the company and employee. Select Alternative 1 if a new employee will be signing the agreement. Select Alternative 2 if the agreement is with a current employee. To ensure that the agreement will be legally binding, the employee should receive something of value over and above normal salary and benefits for signing it- for example, cash, additional vacation time, stock options or other benefits. Specify the compensation to be provided. It does not have to be substantial. For example, several additional days of vacation per year should do it. 1. Company's Trade Secrets This clause defines your company's trade secrets. You don't need to add anything to it; it sets out the types of information and material that should be considered trade secrets. There are several ways to define your company's trade secrets; you can use any of the alternatives provided here. 2. Non-Disclosure of Trade Secrets This clause bars the employee from making unauthorized disclosures of your trade secrets. It also requires the employee to protect the trade secrets and shows that you're serious about keeping trade secrets secret. This clause also explains that the employee's nondisclosure obligation does not extend to information the employee knew before coming to work for the company- information learned from sources outside the company, information that is public knowledge (so long as the employee didn't make it public). 3. Confidential Information of Others This is a good idea to remind new employees not to disclose to the company trade secrets learned from prior employers or others. Employees who take advantage of such information can easily end up being sued. 4. Return of Materials This clause requires employees to return all materials containing trade secrets when they leave the company. They should be reminded of this obligation before they leave. (See Chapter 2 for suggestions on conducting an "exit interview" when an employee leaves.) 5. Confidentiality Obligation Survives Employment This makes clear that the employee's duty not to disclose confidential information does not end when the job does. As long as the material remains a trade secret, the duty to keep it secret remains. Defend Trade Secrets Act Employees who want to take advantage of the provisions in the Defend Trade Secrets Act (View Statute) for obtaining punitive damages and attorney fees from an ex-employee or independent contractor must include a whistleblower provision in all nondisclosure agreements executed after its passage of the law (May 11, 2016). The failure to include the provision does not prevent filing in federal court, it only prevents recovery of punitive damages and attorney fees. In other words, the provision is strongly recommended but not mandatory. Notice of Immunity from Liability. An individual shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that is made (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual (i) files any document containing the trade secret under seal; and (ii) does not disclose the trade secret, except pursuant to court order. State laws may prohibit employees from stealing trade secrets even in the absence of nondisclosure agreements. State laws prohibit employees from improper disclosure of your trade secrets even without using an NDA. We advise you to use an NDA because it's possible to obtain additional benefits when suing over a broken contract including increased damages, payment of attorney fees and a guarantee as to where or how the dispute will be resolved. Protecting Trade Secrets The most prudent means of guaranteeing your company's ownership of a trade secret developed by your employees is to use a written legal agreement. (It's possible, under certain circumstances, for an employer to acquire rights to an employee-created trade secret without a written agreement under legal rules known as "employed to invent" and "work made for hire" laws. Two types of agreements work: an agreement signed before the employee begins working for you, or one signed after work has started, called an assignment. An agreement signed during or after employment requires additional payment. California Law Establishes Trade Secret Ownership. California is unique in that its laws expressly establish that the employer owns trade secrets created by an employee. (Cal. Labor Code Sec. 2860). However, an employer in California would not own trade secrets created on an employee's own time without the use of employee materials. Although the law does not require a contract, it's a good idea to buttress your position in California by the use of a written agreement. Violating Trade Secrets According to the Gonzaga University study on misappropriation of trade secrets over the last 50 years, it has been determined that former employees make up roughly 77% of all trade secret violation filings.

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