

Developments in Latvian Case-Law on Trade Secrets: The Difference Between Trade Secrets and Confidential Information

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A recent judgement in case C33369520 (22 December 2022) of the Latvian Supreme Court has underlined the principle that the Labour Law grants statutory protection only for confidential information listed as trade secrets.

In its judgement, the court stated that confidential information refers not only to information containing trade secrets, but to any information that is declared undisclosed by contract, including information that has no commercial value.

In other words, not all confidential information can be considered a trade secret, but every trade secret is confidential information.

With regard to the employment relationship, the law protects only such confidential information against disclosure which the employer has identified to the employee in writing as a trade secret.

This obligation of the employer can be recognized as fulfilled only when the relevant information is clearly defined. Only when this is the case does the employer obtain the right to the protection of trade secrets granted by law (including, for example, the right to compensation for damages related to unauthorized disclosure).

However, a general clause in an employment contract that any information the employee obtains within the framework of the employment constitutes a trade secret does not suffice.

Thus, Labor Law does not, in general, protect confidential information that does not have the status of a trade secret. Previously, Latvian courts have recognized violations where the relevant job description provided that the employee would be responsible for maintaining confidentiality, recognizing that disclosures of confidential information that are prohibited by the relevant job description, internal work-order regulations, or other binding documents resulting in the loss of the employer's trust, regardless whether that information has commercial value, may constitute unlawful behaviour.

What is recognized as a trade secret is currently governed by Latvia's Trade Secret Protection Law, based on EU directive 2016/943. According to this directive, a trade secret is defined as being undisclosed (i) information having economic nature; (ii) technological knowledge; or (iii) scientific or any other

information, which conforms to all of the following: (a) it is not generally known among or available to persons who normally use such kind of information; (b) it has actual or potential commercial value because it is secret; and (c) the secret holder has taken appropriate and reasonable steps to maintain the secrecy of the trade secret.

EU directive 2016/943 does not require that the trade secrets be listed in writing. However, Latvia has chosen to set as a precondition that the employer must specify in writing specific information considered a trade secret, out of the need to protect the interests of employees as the weaker party.

Therefore, it is important for employers to grant trade-secret status to protectable confidential information in employment contracts.

It should also be noted that disclosure of trade secrets is difficult to prove. For example, the Competition Council has recognized that in free-market circumstances it is a common practice for employees to make offers to customers of other market participants - including former employers. This in itself does not constitute an unfair commercial practice, as it is understandable that an employee will get to know customers well over time. The employees may have memorised their customers and know how to communicate with them and what products to offer. Obtaining this information does not constitute the illegal obtaining of trade secrets. Using the knowledge and experience gained in a previous workplace is logical and can't be considered as a trade-secret violation in the absence of illegal copying of technical information.

Sources:

Judgment of the Civil Department of the Supreme Court of the Republic of Latvia in case C33369520, 2022

Komerčnoslēpuma aizsardzības likums [Trade Secret Protection Law], 2019

Darba likums [Labour Law], 2001

Decision No.160 of the Competition Council of Latvia, 2007

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