

An Alert For Our Clients, Investment Advisors & Business Managers

Disclosing Family Secrets Why Confidentiality Agreements Are A Must For Family Employers

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In her lawsuit against her former employer, a nanny included detailed accounts of her employer's lifestyle and preferences in an effort to "ruin" him. The nanny alleged speculative information about her employer's work life in the lawsuit and included information about people the employer and his spouse discussed over dinner and a list of the people who visited the home. The nanny also mentioned situations that would be embarrassing for her employer.

The nanny is suing her former employer for retaliation, a hostile work environment, age discrimination, unpaid wages, and violation of other labor and health codes. She is seeking more than six million dollars in damages. The nanny worked for the employer for six months, starting in late 2016.

The employer, a former engineer for Uber, is facing another lawsuit for allegedly stealing trade secrets from his previous employer, in order to launch his own self-driving truck start-up company. The nanny of the former Uber engineer has filed an excruciatingly detailed lawsuit," *techcrunch.com* (Jan. 16, 2018).

Why Confidentiality Agreements Are A Must And a few tips for you to keep in mind when preparing them



Commentary and Checklist

In this matter, the former nanny published embarrassing information in the form of a lawsuit in order to damage her employer's reputation. A confidentiality agreement could have protected personal information from improper disclosure.

- ✓ Family employers should consider providing additional consideration (i.e., a money payment) to existing staff in exchange for signing a confidentiality agreement so that it will be legally enforceable.
- ✓ For new hires, family employers should make a confidentiality agreement a condition of being hired.
- ✓ During orientation, train all staff on the confidentiality agreement. Make sure they know that guarding your privacy and the privacy of those around you is necessary not only to protect your reputation but also for your physical safety because personal information could be used by criminals to harm you or your family.
- ✓ Clearly state that violating the confidentiality agreement will be grounds for termination, as well as grounds for a lawsuit.
- ✓ The agreement should not expire upon termination of the employment relationship.
- ✓ If any personal information is leaked, have a third party conduct a thorough investigation. If the investigation concludes that a current or former staff member is responsible, follow your disciplinary procedures for confidentiality agreement violations.

CAUTION Family employers must make sure not to punish staff for openly discussing information that is protected under Section 7 of the National Labor Relations Act (NLRA). Under this law, a family employer must allow staff to talk with each other about pay or other workplace conditions with the objective of improving them.

A staff confidentiality agreement should state that:

- ✓ All private information, communication, photographs, and videos, no matter how created, are to be considered confidential and may not be shared with a third party for any reason.
- ✓ If it is determined that certain information may be divulged to the public, the staff member must obtain written and signed authorization from the employer before doing so.
- ✓ The confidentiality agreement applies to you, your family, and any other individuals with whom you do business or socialize.

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Always Consult With Legal Counsel When Establishing or Implementing Such Standards or Practices

SAMPLE CONFIDENTIALITY AGREEMENT

In exchange for the opportunity to work with XXXXXXXX and his/her related holdings, I enter into this agreement with XXXXXXXX., (XXXXXXX), and all of its associates and or related entities.

1. I understand that (XXXXXXX) is a private individual and that his/her holdings are each private and highly confidential, some of which could relate to the physical or financial safety of at-risk individuals. I attest that I am not a reporter or investigator and that the only services that I am performing relate exclusively to XXXXXXXXXXXXXXXX. During my work with or visits to (XXXXXXX) physical or virtual facilities, I will not make or remove any recordings, video, audio, or photographs, unless agreed to in advance and in writing.
2. I agree that I will not make available to any individuals or organizations any documents, photographs, publications, information about (XXXXXXX)'s facilities, or other materials which come into my possession or over which I have control as a result of my association with (XXXXXXX) or his/her holdings, other than those agreed to in advance.
3. I agree not to give interviews or information to any media organization or to any representative of a television, radio, newspaper, website, blog, or other organization that might publish or distribute information regarding my association with (XXXXXXX) or his/her holdings.
4. I understand that the safety and wellbeing of many people could be adversely affected by disclosures about the location, features, and/or operations of any of (XXXXXXX) facilities. I agree to never disclose any information about (XXXXXXX) facilities, including location, appearance, features, operations, or activities. I also agree that "Confidential Information" shall include: names, pseudonyms, identifying characteristics, or information which reveals or could reveal the identity of (XXXXXXX) or their associates, the location and/or whereabouts of any of (XXXXXXX)'s personal habits, routines or schedules, personal or business associates of (XXXXXXX), personal and/or real property and/or assets of (XXXXXXX), security programs of (XXXXXXX), including, but not limited to, staffing of security details, the identity or number of personnel assigned to security details, shifts of personnel assigned to security details, the identity of potential stalkers, predators, pursuers, and/or suspects of (XXXXXXX).
5. I agree to refrain from using any information which I acquire in the course of my association with (XXXXXXX) for any personal or commercial purposes, other than those approved for use in the project or service I am conducting for (XXXXXXX), at any time in the future.
6. I understand that violators of this agreement will be held liable, to the fullest extent allowed by law. I further understand that actual or threatened breaches of this agreement shall entitle (XXXXXXX) to seek an injunction restraining me from such conduct or pursuits which I have, by my signature below, agreed not to undertake.
7. I agree to notify (XXXXXXX) immediately in the event that I am urged to violate this agreement by anyone, including any representative of any competing firm or individual, or any member of the media.
8. Should any portion of this agreement be found void or voidable, invalid, improper or in violation of public policy, the remaining portions shall remain in full force and effect.

Date _____

Signature _____