

Trade Secret Laws: New Jersey

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A Q&A guide to state law on trade secrets and confidentiality for private employers in New Jersey. This Q&A addresses the state-specific definitions of trade secrets and the legal requirements relating to protecting them. Federal, local, or municipal law may impose additional or different requirements. Answers to questions can be compared across a number of jurisdictions (see Trade Secret Laws: State Q&A Tool).

Overview of State Trade Secret Law

1. List the laws (statutes and regulations) by name and code number, both criminal and civil, that your state has adopted governing trade secrets.

New Jersey has enacted the New Jersey Trade Secrets Act (NJTSA), a version of the model Uniform Trade Secrets Act (N.J.S.A. 56:15-1 to 56:15-9). The NJTSA builds on New Jersey's common law tradition of trade secret protection.

In addition, New Jersey's Computer Related Offenses Act (CROA) provides civil remedies for wrongful actions that may affect trade secrets contained in:

- Data.
- A database.
- A computer.
- A computer program.
- A computer system.
- A computer network.
- Computer software.
- Computer equipment.

(N.J.S.A. 2A:38A-1 to 2A:38A-6.)

Under the CROA, some of the wrongful actions include unauthorized:

- Altering.
- Damaging.
- Taking.
- Accessing.
- Attempting to access.
- Destruction.

(N.J.S.A. 2A:38A-3.)

The New Jersey Open Public Records Act exempts trade secrets from the definition of government records that must be disclosed to the public (N.J.S.A. 47:1A-1.1; *Gill v. N.J. Dept. of Banking & Ins.*, 960 A.2d 397, 399-400 (N.J. Super. Ct. App. Div. 2008)). The statute also prohibits government agencies from disclosing biotechnology trade secrets or related confidential information, except as allowed under federal law (N.J.S.A. 47:1A-1.2(b)).

Trade secrets may also be protected by New Jersey's criminal statute, which addresses both theft and computer-related criminal activity (N.J.S.A. 2C:20-1(i), 2C:20-3, and 2C:20-23 to 2C:20-34).

2. Has your state adopted the model Uniform Trade Secrets Act (UTSA)? If so, please:

- Identify which among the statutes listed in response to Question 1 is your state's adopted version of the UTSA.
- Describe any significant differences between your state's adopted version and the model UTSA.

Adopted Version of Model UTSA

New Jersey has adopted a version of the Uniform Trade Secrets Act (UTSA), with some modifications. It is referred to as the New Jersey Trade Secrets Act (NJTSA) (N.J.S.A. 56:15-1 to 56:15-9). For an overview of the UTSA, see [Practice Note, Protection of Employers' Trade Secrets and Confidential Information: Trade Secrets](#).

Significant Differences Between Adopted Version and Model UTSA

“Improper Means” Further Defined

The NJTSA expands on the UTSA's definition of improper means by adding that it is improper to obtain a trade secret by using:

- Unauthorized access.
- Access that exceeds the scope of authorization.
- Other means violating a person's rights under New Jersey law.

(N.J.S.A. 56:15-2.)

“Proper Means” Expressly Defined

The NJTSA also adds an express definition of proper means, including:

- Independent invention.
- Reverse engineering.
- Discovery under a license from the trade secret owner.
- Observation of the information in public use or on public display.
- Obtaining the trade secret from published literature.
- Discovery or observation by any other means that is not improper.

(N.J.S.A. 56:15-2.)

Further, the NJTSA defines reverse engineering as starting with a known product and working backward to find the method that developed it, if the product's acquisition was lawful or from a source with the legal right to convey it, for example, because the product was bought on the open market (N.J.S.A. 56:15-2).

Protection of Trade Secrets During Litigation

The NJTSA includes the UTSA's language stating that a court must preserve the secrecy of an alleged

trade secret by reasonable means. However, the NJTSA does not include examples of reasonable means, simply stating instead that reasonable means must be consistent with the Supreme Court of New Jersey's Rules of Court (N.J.S.A. 56:15-7).

Preemption Provision

For purposes of common law preemption, the NJTSA supplements rather than displaces common law rights that are consistent with it. The NJTSA rejects Section 7 of the UTSA, instead providing both that:

- The rights, remedies, and prohibitions provided under the NJTSA are in addition to and cumulative of any other right, remedy, or prohibition provided under New Jersey statutory or common law.
- Nothing in the NJTSA must be construed to deny, repeal, or impair any statutory or common law right, remedy, or prohibition except as expressly provided in Section 56-15-9(b) of the New Jersey Statutes.

(N.J.S.A. 56:15-9(a).)

Section 56-15-9(b) of the New Jersey Statutes states that the NJTSA supersedes conflicting tort, restitutionary, and other New Jersey law that provides civil remedies for trade secret misappropriation (N.J.S.A. 56:15-9(b)). However, in *SCS Healthcare Marketing, LLC v. Allergan USA, Inc.*, a New Jersey Superior Court denied defendant's motion to dismiss several of plaintiff's common law claims, which defendant had argued were based on the same facts and occurrences as plaintiff's NJTSA claim and were therefore preempted. The court relied on the language of N.J.S.A. 56:15-9(a), and that provision's divergence from the UTSA, in denying the motion. (2012 WL 6565713 (N.J. Super. Ct. Ch. Div. Dec. 7, 2012).) A federal court interpreting the NJTSA held that in passing the NJTSA, “the legislature only wished to pre-empt state law that clearly conflicted with the terms of the [NJTSA]” (*Ho-Ho-Kus, Inc. v. Sucharski*, 2023 WL 7403539, at *10 (D.N.J. Nov. 9, 2023).

For more information on preemption under the NJTSA, see Questions 3 and 19.

3. List any common law protections afforded to trade secrets. If common law protections are afforded to trade secrets, are they preempted by available state statutes?

New Jersey courts analyze trade secret misappropriation under the Restatement (Third) of Unfair Competition's confidentiality principles (*Expeditors Int'l of Wash., Inc. v. Direct Line Cargo Mgmt. Servs., Inc.*, 995 F. Supp. 468, 481 (D.N.J. 1998)). New Jersey courts have also referenced the Restatement (First) of Torts's trade secret definition and its six-factor trade secret analysis (*Hammock ex rel. Hammock v. Hoffman-LaRoche, Inc.*, 662 A.2d 546, 560 (N.J. 1995)).

The Restatement (First) of Torts's six factors include:

- The extent to which the information is known outside of the business.
- The extent to which it is known by employees and others in the business.
- The extent of the owner's measures to guard the information's secrecy.
- The information's value to the owner and to competitors.
- The amount of effort or money used to develop the information.
- How easy or difficult it would be for others to properly acquire or duplicate the information.

(Restatement (First) of Torts § 757 cmt. b (1939).)

Under the common law duty of confidence, a person cannot disclose a trade secret when:

- The person knew or had reason to know that the discourse was intended to be in confidence.
- The other party to the disclosure reasonably inferred that the person consented to an obligation of confidentiality.

(Restatement (Third) of Unfair Competition § 41 cmt. b (1995).)

Competitors owe no duty of loyalty or confidence to a trade secret owner. However, a competitor may be liable for trade secret misappropriation if the competitor acquires the trade secret with knowledge of a former employee's breach of confidence and uses it. (*Rohm & Haas Co. v. Adco Chem. Co.*, 689 F.2d 424, 429-30 (3d Cir. 1982).)

New Jersey law permits employers to use restrictive covenants to guard against:

- Misappropriation of company information by current and former employees. New Jersey courts require these agreements to be reasonable.

(*Ingersoll-Rand Co. v. Ciavatta*, 542 A.2d 879, 887-88 (N.J. 1988).)

- Misappropriation of company information that does not meet the definition of a trade secret (*Lamorte Burns & Co. v. Walters*, 770 A.2d 1158, 1166-67 (N.J. 2001)).

Confidential and proprietary business information may also be protectable, even without an express agreement. In *Lamorte Burns & Co. v. Walters*, two employees breached their duty of loyalty by stealing protected information that they intended to use to compete with their former employer after resigning (770 A.2d at 1169-70).

In *SCS Healthcare Marketing, LLC*, a New Jersey Superior Court denied a defendant's motion to dismiss common law claims that the defendant had argued were preempted by the NJTSA (2012 WL 6565713) (denying dismissal of claims for misappropriation of confidential information, conversion, trespass to chattels, unfair competition, tortious interference with contract, and civil conspiracy)). However, it is advisable for practitioners to carefully evaluate whether the rights, remedies, or prohibitions under the common law conflict with the NJTSA's provisions. Discussing preemption, the NJTSA expressly provides both that:

- The rights, remedies, and prohibitions provided under the NJTSA are in addition to and cumulative of any other right, remedy, or prohibition provided under New Jersey statutory or common law.
- Nothing in the NJTSA should be construed to deny, repeal, or impair any statutory or common law right, remedy, or prohibition except as expressly provided in Section 56-15-9(b) of the New Jersey Statutes.

(N.J.S.A. 56:15-9(a).)

Section 56-15-9(b) of the New Jersey Statutes states that the NJTSA supersedes conflicting tort, restitutionary, and other New Jersey law that provides civil remedies for trade secret misappropriation (N.J.S.A. 56:15-9(b)).

For more information on preemption under the NJTSA, see Questions 2 and 19.

Definition of Trade Secret

4. How does your state define a trade secret under each law identified in Question 1 (statute or regulation) and Question 3 (common law)?

Statute

Under the New Jersey Trade Secret Act (NJTSA) a trade secret is defined as information:

- Held by one or more people, without regard to form.
- That includes:
 - a formula;
 - a pattern;
 - a business data compilation;
 - a program;
 - a device;
 - a method;
 - a technique;
 - a design;
 - a diagram;
 - a drawing;
 - an invention;
 - a plan;
 - a procedure;
 - a prototype; or
 - a process.
- That derives actual or potential independent economic value because it is:
 - not generally known; and
 - not readily ascertainable by proper means by persons who can obtain economic value from its disclosure or use.
- That is the subject of reasonable efforts under the circumstances to maintain its secrecy.

(N.J.S.A. 56:15-2.)

New Jersey Superior Courts have affirmed motions for summary judgment and granted motions to dismiss for failure to state an NJTSA claim because:

- The information did not meet the definition of a trade secret because the information was previously disclosed to third parties and because the owner of the information did not engage in reasonable efforts to maintain the secrecy of the information (*Supreme Elastic Corp. v. Schulein*, 2024 WL 502342, at *7 (N.J. App. Div. Feb. 9, 2024)).

- The information failed to meet the definition of a trade secret and the owner of the information did not allege that they took any steps to prevent disclosure of the information (*Lard-VID, LLC v. Ground Support Labs, LLC*, 2021 WL 2396576, at *6 (N.J. Super. L. Feb. 26, 2021)).
- The information was not a trade secret where it was:
 - previously disclosed to third parties; and
 - publicly available.

(*EBIN New York, Inc. v. Beauty Plus Trading Co., Inc.*, 2022 WL 896631, at *2-3 (N.J. Super. L. Mar. 18, 2022).)

Federal courts interpreting the NJTSA have held that a plaintiff need not articulate each individual trade secret by name and description at the pleading stage (*Storysoft LLC v. WebMD LLC*, 2024 WL 3771821, at *4 (D.N.J. Aug. 13, 2024)).

Common Law

New Jersey courts have used the Restatement (First) of Torts's trade secret definition, under which a trade secret is any:

- Formula.
- Pattern.
- Device.
- Compilation of information.

(Restatement (First) of Torts § 757 cmt. b (1939); *Ahlert v. Hasbro, Inc.*, 325 F. Supp. 2d 509, 512-13 (D.N.J. 2004).)

To be protected as a trade secret, information must:

- Be used in business.
- Give the owner an opportunity to obtain an advantage over competitors who do not know or use it.

(Restatement (First) of Torts § 757 cmt. b (1939); *Ahlert*, 325 F. Supp. 2d at 512-13.)

Criminal Statute

The New Jersey Criminal Code requires trade secret information to be both secret and valuable. The Code defines a trade secret as the whole, any portion, or phase of any:

- Scientific or technical information.
- Design.

- Process.
- Procedure.
- Formula.
- Improvement.

(N.J.S.A. 2C:20-1(i).)

A trade secret is presumed to be secret when the owner takes measures to prevent it from becoming available to unauthorized persons (N.J.S.A. 2C:20-1(i)).

5. Describe any significant cases in your state creating, modifying or clarifying the definition of a trade secret.

Under New Jersey law, a trade secret's subject matter cannot be public knowledge or general knowledge within the relevant industry. However, even if a set of ingredients is generally known to an industry, there may still be protection if the combination method is secret. (*Sun Dial Corp. v. Rideout*, 108 A.2d 442, 445 (N.J. 1954).)

In *Sun Dial Corp. v. Rideout*, the court restrained the defendant corporation from using or disclosing a secret process learned in confidence by the individual defendants, who were former employees (108 A.2d at 447-48).

New product ideas and marketing materials are not considered trade secrets, as they are not included in the Restatement's trade secret definition (*Johnson v. Benjamin Moore & Co.*, 788 A.2d 906, 922-23 (N.J. Super. Ct. App. Div. 2002)). In *Benjamin Moore & Co.*, an inventor sued a paint company for trade secret misappropriation when the company developed a new product following the inventor's presentation of his do-it-yourself art mural idea. The court held that the plaintiff's product idea and marketing materials were not trade secrets. (788 A.2d at 923.)

For more examples, see Questions 6 and 7.

6. What are examples of information that courts in your state:

- Have found to be trade secrets?
- Have found not to be trade secrets?
- Have found not to be trade secrets as a matter of law?

Trade Secrets

In New Jersey, the following types of information may be protected as trade secrets:

- Scientific data, including:
 - chemical processes and manufacturing methods (*Sun Dial Corp.*, 108 A.2d at 445-46);
 - machines and devices (*Adolph Gottscho, Inc. v. Am. Marking Corp.*, 114 A.2d 438, 440-42 (N.J. 1955)); and
 - a manufacturing process (*Rohm & Haas Co.*, 689 F.2d at 431-32).
- Business information, including:
 - a code for determining discounts, rebates, or other concessions in a price list or catalogue, or bookkeeping or other office management methods, if the business continuously uses the information (*Boost Co. v. Faunce*, 80 A.2d 246, 249 (N.J. Super. Ct. Ch. Div. 1951));
 - pricing information (*Sunbelt Rentals, Inc. v. Love*, 2021 WL 82370, at *24 (D.N.J. Jan. 11, 2021));
 - an accounting firm's internal audit manuals (*Mid Am. Waste Sys., Inc. Sec. Litig. v. Coopers & Lybrand*, 1997 WL 1045729, at *2 (D.N.J. Dec. 10, 1997));
 - customer or client lists and information (*AYR Composition, Inc. v. Rosenberg*, 619 A.2d 592, 597 (N.J. Super. Ct. App. Div. 1993); see Question 7);
 - marketing techniques (*Sunbelt Rentals*, 2021 WL 82370, at *24);
 - computer programs (*Trump Castle Assocs. v. Tallone*, 645 A.2d 1207, 1208-10 (N.J. Super. Ct. App. Div. 1994)); and
 - financial information, customer data, merchandise information, and vendor information (*P.C. of Yonkers, Inc. v. Celebrations! The Party & Seasonal Superstore*, 2007 WL 708978, at *10-*11 (D.N.J. Mar. 5, 2007)).

Not Trade Secrets

New Jersey courts have found that the following information are not trade secrets:

- Skills, expertise, and general knowledge that an employee learned or developed while working for the former employer (*Ingersoll-Rand Co.*, 542 A.2d at 889).

- General knowledge of a firm's inner workings (*Laidlaw, Inc. v. Student Transp. of Am., Inc.*, 20 F. Supp. 2d 727, 760 (D.N.J. 1998) (Abrogated on other grounds in *ADP, LLC v. Rafferty*, 923 F.3d 113 (3d Cir. 2019))).

Not Trade Secrets as a Matter of Law

The following have been found not to be trade secrets as a matter of law:

- Idea submissions, where the plaintiff cannot show that the defendants used the product in their business (*Ahlert*, 325 F. Supp. 2d at 513).
- New product ideas (*Johnson*, 788 A.2d at 922-23).
- Marketing concepts (*Johnson*, 788 A.2d at 922-23).

7. To what extent have:

- Customer, client, or subscriber lists been given trade secret protection?
- Former employees been enjoined from using a former employer's customer information?

Customer Lists Can Be Protected as Trade Secrets

New Jersey courts have held that confidential customer lists may be protected from use or disclosure by current or former employees (*AYR Composition, Inc.*, 619 A.2d at 597).

However, when employees take personal contacts from job to job, employers do not have a protectable interest in those relationships (*Coskey's TV & Radio Sales & Serv., Inc. v. Foti*, 602 A.2d 789, 794-95 (N.J. Super. Ct. App. Div. 1992)). Similarly, if customers are known in an industry or are easily discernable, employers do not have a protectable interest in that information (see *Nat'l Tile Bd. Corp. v. Panelboard Mfg. Co.*, 99 A.2d 440, 442 (N.J. Super. Ct. Ch. Div. 1953)).

In addition, the [Supreme Court of New Jersey](#) held that a hiring employer does not have an affirmative duty to inquire as to the source of a customer list that a newly hired employee brings from a former employer (*Fox v. Millman*, 45 A.3d 332, 346-47 (N.J. 2012)).

The New Jersey Trade Secret Act's (NJTSA) definition of a trade secret does not expressly refer to customer lists. However, a customer list is arguably a business data compilation, which is included in the definition, but the law is unclear on this issue.

While no court has specifically addressed the issue of customer lists under the NJTSA in a published decision, practitioners regularly assert claims under the law. After the statute became effective, the Supreme Court of New Jersey, in a case brought before the NJTSA was enacted, made reference to "the presumptive confidentiality of customer lists" (*Fox*, 45 A.3d at 334). Similarly, in a case brought under the NJTSA, the New Jersey Appellate Division stated that customer lists "can be considered confidential and subject to protection" (*Steris Corp. v. Shannon*, 2019 WL 2420048, at *4 (N.J. Super. Ct. App. Div. June 10, 2019)).

Federal district courts analyzing New Jersey law made similar references after the enactment of the NJTSA (*IDT Corporation v. Unlimited Recharge, Inc.*, 2012 WL 4050298, at *6 (D.N.J. Sept. 13, 2012)). Additionally, in a case brought under the NJTSA, both the trial court and the Appellate Division seemed to concede that client lists remain trade secrets under the NJTSA (*Truong, LLC d/b/a V.I.P. Nails and V.I.P. Nails Too v. Tran*, 2013 WL 85368, at *4 (N.J. Super. Ct. App. Div. Jan. 9, 2013)).

Federal district courts analyzing the NJTSA have held that a compilation or combination of public information may be a trade secret (*Fora Fin. Holdings, LLC v. Dream Data Servs., LLC*, 2023 WL 6049835, at *4 (D.N.J. Sept. 14, 2023); *On Location, Inc. v. Popovich*, 2023 WL 2674843, at *3 (D.N.J. Mar. 29, 2023)).

Scope of Injunction Enjoining Use of Former Employer's Customer List

In *Coskey's TV & Radio Sales & Services, Inc. v. Foti*, an employer sued its former employee for breach of a restrictive covenant. The preliminary injunction restricted the former employee, Foti, from contacting any of the customers he had worked with during his employment, including those he had known before being hired. (602 A.2d at 790-92.)

On appeal, the court balanced the employer's protectable interest against the former employee's hardship. Given the former employee's extreme financial hardship and the limited benefit for the employer, the court substantially vacated the injunction. (*Coskey's*, 602 A.2d at 796.)

The decision held that the injunction should be limited to:

- Successful contracts that the employee had negotiated for the employer.

- Outstanding bids the employee had participated in.
- The employer's relationships with particular customers where the employer was instrumental in providing the contact.

(*Coskey's*, 602 A.2d at 796.)

Reasonable Efforts to Maintain Secrecy

8. What efforts to maintain secrecy have been deemed reasonable or sufficient for trade secret protection by:

- Courts in your state?
- Statutes or regulations in your state?

Courts

In New Jersey, a company generally takes reasonable steps to protect information as trade secrets when it limits access to the trade secrets and its premises through signage and security measures. Some examples of reasonable steps include:

- Keeping information in a locked office (*P.C. of Yonkers, Inc.*, 2007 WL 708978, at *11).
- Using computer monitoring systems with password-restricted access (*P.C. of Yonkers, Inc.*, 2007 WL 708978 at *11).
- Issuing a deliberately ambiguous publication of the information (*Sun Dial Corp.*, 108 A.2d at 447).
- Requiring visitors to sign a register and agree not to divulge their observations (*Sun Dial Corp.*, 108 A.2d at 445).
- Informing employees that the information is secret (*Sun Dial Corp.*, 108 A.2d at 445-46).
- Making information unavailable to competitors or the public and ensuring that employees learn the information in confidence (*Sun Dial Corp.*, 108 A.2d at 447).

In *National Tile Board Corp. v. Panelboard Manufacturing Company*, the court, without explicitly stating that a manufacturing company failed to make reasonable efforts, held that the company's machines were not trade secrets because:

- The employees did not have employment contracts.

- The defendant employees did not have jobs the court could characterize as confidential.
- The employees were not required to promise to keep the information secret to either learn about or use the machines.
- Every employee could access the entire factory.
- Every employee could observe the machinery's operation.
- It was uncertain whether the restrictions on outsiders entering the factory were enforced.

(99 A.2d at 443-44.)

A court will not automatically terminate an employer's pre-existing cause of action against a former employee, even if the employer discloses some of its trade secrets in patents that are issued after the defendant employee misappropriated the information (*Adolph Gottscho, Inc.*, 114 A.2d at 440-441).

Statutes or Regulations

The New Jersey Trade Secret Act's trade secret definition requires that the alleged trade secret must be subject to reasonable efforts under the circumstances to maintain its secrecy, though it does not specify what it considers reasonable efforts (N.J.S.A. 56:15-2).

Trade Secret Misappropriation Claims

9. For any law identified in Question 1 (statutes or regulations) or Question 3 (common law), what must a plaintiff show to prove trade secret misappropriation?

Statute

Under the New Jersey Trade Secrets Act (NJTSA), misappropriation is defined in three different ways:

- Acquisition.
- Disclosure.
- Use.

(N.J.S.A. 56:15-2.)

Acquisition as Misuse

A trade secret can be misappropriated where the acquirer knew or had reason to know that the

trade secret was acquired by improper means (see Question 2: “Improper Means” Further Defined; N.J.S.A. 56:15-2). Threatened misappropriation may be enjoined under the NJTSA (N.J.S.A. 56:15-3(a); *Thomas v. Keough*, 2024 WL 414041, at *24 (D.N.J. Feb. 5, 2024)).

One example of an employee acquiring a trade secret by improper means is when the employee was privy to trade secrets as part of his employment but exceeded his authority to access of the trade secret information by sending the information to his personal email, thus acquiring it by improper means (*Shrink Packaging Sys. Corp. v. Kist*, 2023 WL 5664733, at *7 (D.N.J. Sept. 1, 2023)).

Disclosure or Use of Trade Secret as Misuse

Disclosure or use of another’s trade secret without express or implied consent of the trade secret owner can be misappropriation where the person either:

- Used improper means to acquire knowledge of the trade secret.
- At the time of disclosure or use, knew or had reason to know that the trade secret was:
 - derived through improper means; or
 - acquired through improper means.
- Before a material change of position, knew or had reason to know that:
 - the information was a trade secret; and
 - knowledge of it had been acquired through improper means.

(N.J.S.A. 56:15-2.)

Common Law

Under New Jersey common law, to prove trade secret misappropriation a plaintiff must show each of the following:

- A trade secret exists (see Question 4).
- The plaintiff communicated the information in confidence to the employee.
- The employee disclosed the secret information in breach of that confidence.
- A competitor acquired the secret information with knowledge of the employee’s breach of confidence.
- The competitor used the secret information to the plaintiff’s detriment.

- The plaintiff took precautions to maintain the secrecy of the trade secret (see Question 8).

(*Rycoline Prods., Inc. v. Walsh*, 756 A.2d 1047, 1052 (N.J. Super. Ct. App. Div. 2000).)

Under *Rycoline Prods., Inc. v. Walsh*, a trade secret owner is not required to show that a competitor used the secret information to make a product that is identical to the trade secret product (*Rycoline Prods., Inc.*, 756 A.2d at 1053).

10. Can corporations, corporate officers, and employees of a competing company in possession of the trade secrets of others be held liable for misappropriation in your state? If so, under what circumstances?

In New Jersey, a plaintiff may allege trade secret misappropriation claims against corporations, corporate officers, and employees of a competing company (see *Rycoline Prods., Inc.*, 756 A.2d at 1049-50; *Rohm & Haas Co.*, 689 F.2d at 427).

To prove trade secret misappropriation against these parties a plaintiff must show each of the following:

- A trade secret exists (see Question 4).
- The plaintiff communicated the information in confidence to the employee.
- The employee disclosed the secret information in breach of that confidence.
- A competitor acquired the secret information with knowledge of the employee’s breach of confidence.
- The competitor used the secret information to the plaintiff’s detriment.
- The plaintiff took precautions to maintain the secrecy of the trade secret (see Question 8).

(*Rycoline Prods., Inc.*, 756 A.2d at 1052.)

Defenses

11. For any law identified in Question 1 (statutes and regulations) or Question 3 (common law), what defenses are available to defend against claims under the statute or common law?

Statute

The New Jersey Trade Secret Act (NJTSA) allows for a variety of defenses, which may include that:

- The information fails to meet the NJTSA's trade secret definition (see Question 4).
- There was no misappropriation (see Question 9).
- The trade secret was obtained through proper means (see Question 2).
- The three-year statute of limitations has run (see Question 12).
- The trade secret owner failed to make reasonable efforts to protect its trade secrets (see Questions 2 and 8).

The NJTSA explicitly states that it is not a defense to misappropriation to claim that proper means to acquire the trade secret existed at the time of the misappropriation (N.J.S.A. 56:15-5).

Common Law

Defenses to a misappropriation of trade secrets claim include:

- Lack of standing to sue.
- Equitable defenses, including:
 - estoppel;
 - laches (*Fox*, 45 A.3d at 341-46);
 - waiver; and
 - unclean hands.

Criminal Statute

In New Jersey, a criminal defendant has an affirmative defense to a trade secret theft prosecution if the defendant either:

- Was unaware that the property belonged to another.
- Acted under an honest claim of right to the property or had a right to acquire or dispose of it as the defendant did.

(N.J.S.A. 2C:20-2(c).)

Statute of Limitations

12. For any law identified in Question 1 (statutes and regulations) or Question 3 (common law), please identify the relevant statute of limitations for bringing a claim.

Statute

The New Jersey Trade Secret Act imposes a three-year statute of limitations for a claim of trade secret misappropriation (N.J.S.A. 56:15-8). The three-year period begins to run from when the misappropriation either:

- Is discovered.
- Should have been discovered by the exercise of reasonable diligence.

(N.J.S.A. 56:15-8.)

A continuing misappropriation constitutes a single claim (N.J.S.A. 56:15-8).

Criminal Statute

New Jersey imposes a five-year statute of limitations on criminal prosecutions for a trade secret misappropriation (N.J.S.A. 2C:1-6(b)(1)).

Other Related Claims

13. What other claims, statutory or common law, can a plaintiff bring in your state against a defendant in the event of wrongful acquisition, misuse, or disclosure of a trade secret?

Under New Jersey common law for wrongful acquisition, misuse or disclosure of a trade secret, a plaintiff may bring the following claims:

- Breach of duty of loyalty.
- Tortious interference.
- Unfair competition.

(See *Lamorte Burns & Co.*, 770 A.2d at 1166-67.)

Plaintiffs may allege both common law trade secret misappropriation and a claim under New Jersey's Computer Related Offenses Act (CROA) (N.J.S.A. 2A:38A-3; see *P.C. of Yonkers*, 2007 WL 708978, at *1). The CROA protects computer-related sources, which may contain trade secrets (*P.C. of Yonkers*, 2007 WL 708978, at *7-11). A computer database containing financial, merchandise, customer, and vendor information is a trade secret when it is:

- Compiled through and for use in the plaintiffs' business.
- Stored for the plaintiffs' exclusive use.
- Protected from dissemination to the general public. (*P.C. of Yonkers, Inc.*, 2007 WL 708978, at *11.)

Remedies

14. For any law identified in Question 1 (statutes and regulations) and Question 3 (common law), please describe the potential relief available to plaintiffs.

Statutes

Under the New Jersey Trade Secret Act (NJTSA), potential relief may include:

- Monetary damages (N.J.S.A. 56:15-4(a)).
- Injunctive relief (N.J.S.A. 56:15-3(a)).
- Punitive damages, for willful and malicious misappropriation (N.J.S.A. 56:15-4(b)).
- Attorneys' fees and costs for the prevailing party, for willful and malicious appropriation or a bad faith claim of misappropriation (N.J.S.A. 56:15-6).
- A reasonable royalty (N.J.S.A. 56:15-4(a) and 56:15-3(b)).
- Court order compelling affirmative acts to protect the trade secret (N.J.S.A. 56:15-3(c)).

For violations of New Jersey's civil Computer Related Offenses Act, a plaintiff may obtain:

- Compensatory damages.
- Punitive damages.
- Attorneys' fees.

- An injunction.
- Investigation and litigation costs.

(N.J.S.A. 2A:38A-3 and 2A:38A-5.)

Those found guilty under New Jersey's theft and criminal computer-related theft statutes may be imprisoned (N.J.S.A. 2C:20-2, 2C:20-25, 2C:20-31, and 2C:43-6).

Common Law

Common law trade secret misappropriation in New Jersey may entitle a plaintiff to:

- Injunctive relief (see *Raven v. A. Klein & Co.*, 478 A.2d 1208, 1211-12 (N.J. Super. Ct. App. Div. 1984)).
- Damages (*Platinum Mgmt., Inc. v. Dahms*, 666 A.2d 1028, 1044-47 (N.J. Super. Ct. Law Div. 1995)).
- Punitive damages (see *Lamorte Burns & Co.*, 770 A.2d at 1160-61).

The damages for misappropriation of trade secrets may be measured by either:

- The plaintiff's losses.
- The profits unjustly received by the defendant.

(*Shamrock Techs., Inc. v. Med. Sterilization, Inc.*, 6 F.3d 788, at *3 (Fed. Cir. 1993).)

Contractual Protections

15. What factors do courts in your state consider when assessing the enforceability of a nondisclosure or confidentiality agreement?

Nondisclosure agreements aimed at preventing a former employee's disclosure of trade secrets and confidential information are enforceable only if they are reasonable (*Raven*, 478 A.2d at 1210).

New Jersey courts enforce covenants not to compete if they are reasonable in their geographical limitations, duration, and scope of prohibited activities (*Cmty. Hosp. Group, Inc. v. More*, 869 A.2d 884, 897 (N.J. 2005)).

Courts use a three-part test to determine whether a non-compete agreement is reasonable and therefore enforceable. The court must determine whether the restrictive covenant:

- Is necessary to protect the employer's legitimate interests in enforcement. An employer's legitimate interests include protecting:

- customer relationships;
- trade secrets; and
- confidential business information.

(*Coskey's*, 602 A.2d at 794.)

In restrictive covenants for physicians, an employer's legitimate interests may include protecting patient lists, patient referral bases, and investment in a physician's training. However, legitimate business interests do not include restricting competition (*Cmt. Hosp. Group, Inc.*, 869 A.2d at 897).

- Would cause undue hardship to the employee. The court must determine:
 - the likelihood the employee can find other work in the field; and
 - the burden the restriction places on the employee.

(*Pathfinder, L.L.C. v. Luck*, 2005 WL 1206848, at *8 (D.N.J. May 20, 2005).)

However, if an employee resigns, courts are less likely to find undue hardship because the employee triggered the restriction (*Pathfinder L.L.C.*, 2005 WL 1206848, at *8).

- Would injure the public. New Jersey courts balance the public's right to access the advice of professionals licensed by the state against the employer's legitimate patient or client relationships (*Coskey's*, 602 A.2d at 793).

(*Cmt. Hosp. Group, Inc.*, 869 A.2d at 897.)

Sufficient consideration to support a non-compete covenant may include:

- An offer of employment.
- A promise of continued employment.
- A change in the terms or conditions of employment.

(*Hogan v. Bergen Brunswig Corp.*, 378 A.2d 1164, 1167 (N.J. Super. Ct. App. Div. 1977).)

New Jersey courts may modify or blue-pencil an overbroad non-compete covenant, permitting total or partial enforcement to the extent reasonable under the circumstances (*Solari Indus., Inc. v. Malady*, 264 A.2d 53, 61 (N.J. 1970)).

Depending on the court's analysis, a restrictive covenant may be disregarded, partially enforced, or

completely enforced to the extent reasonable under the circumstances (*Cmt. Hosp. Group, Inc.*, 869 A.2d at 897 and 899-900).

For more information on restrictive covenants in New Jersey, see [State Q&A, Non-Compete Laws: New Jersey](#).

Miscellaneous

16. What common law duties are recognized in your state that prohibit employees from disclosing employer information even absent an independent contractual obligation?

New Jersey employees owe a duty of loyalty to current and former employers, prohibiting improper acquisition, misuse, or disclosure of trade secrets acquired during their employment (*Sun Dial Corp.*, 108 A.2d at 446-47; *Auxton Computer Enters. v. Parker*, 416 A.2d 952, 956 (N.J. Super. Ct. App. Div. 1980); *Technology Dynamics Inc. v. Master*, 2019 WL 962839, at *7 (App. Div. Feb. 26, 2019)).

17. Does your state recognize the doctrine of inevitable disclosure?

New Jersey courts apply the doctrine of inevitable disclosure. A court may grant injunctive relief to prevent disclosure if both:

- An employee with access to the former employer's trade secrets takes a new job similar to the previous one.
- There is sufficient likelihood of inevitable disclosure.

(*Nat'l Starch & Chem. Corp. v. Parker Chem. Corp.*, 530 A.2d 31, 33 (N.J. Super. Ct. App. Div. 1987); *Sunbelt Rentals*, 2021 WL 82370, at *25-26.)

For general information on the inevitable disclosure doctrine, see [Practice Note, Non-Compete Agreements with Employees: Protection in the Absence of Non-Competes: Inevitable Disclosure](#).

18. What, if anything, have courts held regarding trade secret misappropriation claims involving memorizing trade secrets rather than the taking of tangible representations of information?

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For trade secret misappropriation purposes, New Jersey courts have not addressed whether information memorization is treated differently than taking tangible representations of information.

19. Do any of the laws identified in Question 1 (statutes and regulations) or Question 3 (common law) preempt other causes of action a plaintiff could assert related to trade secret misappropriation (for example, conversion, breach of fiduciary duty, unfair competition, or tortious interference)?

The New Jersey Trade Secret Act (NJTSA) contains an internal inconsistency or at least a tension on the issue of preemption, which is likely to exist until case law interpreting the NJTSA develops further. A New Jersey Superior Court addressed the issue in *SCS Healthcare Marketing, LLC*, where it denied the defendant's motion to dismiss several common law

claims based on the same facts and occurrences as plaintiff's claim for violation of the NJTSA (2012 WL 6565713).

Additionally, New Jersey's economic loss doctrine, which bars recovery in tort when entitlement to losses only flows from a contract, can operate either to bar a claim or prevent recovery in tort (for example, for trade secret misappropriation), where the underlying facts of the tort claim are not separate and distinct from a companion contract claim (for example, breach of a restrictive covenant contained in a nondisclosure agreement) (*Howmedica Osteonics Corp. v. Zimmer*, 2012 WL 5554543, at *3-4 (D.N.J. Nov. 14, 2012); *IDT Corp. v. Unlimited Recharge, Inc.*, 2012 WL 4050298, at *6 (D.N.J. Sept. 13, 2012)).

For more information on the preemption issue under the NJTSA, see Questions 2 and 3.

Under New Jersey's criminal theft statute (N.J.S.A. 2C:20-1 to 2C:20-39), wrongdoers may be criminally prosecuted and sued civilly for trade secret misappropriation or related claims under the common law (see Question 1).

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