

3 July 2015

3HR Legal Weekly

Commercial

Non-disclosure (or confidentiality) agreements

Companies can be fiercely protective of information that has been created, developed or discovered internally. This is rightly so, as vast sums of money are often spent on the research and development of assets.

Maintaining the confidentiality of this information is invaluable however, it is often necessary to share information with third parties in order to further develop a project, or indeed get the project ready for market. How do you ensure that the same obligations of confidentiality that you impose internally in your company cover information disclosed to third parties?

The framework for the disclosure and receipt of confidential information is often governed by a non-disclosure, or confidentiality agreement (NDA). The English courts will enforce obligations of confidentiality that one party imposes on another expressly by contract.

NDAs must be drafted carefully. The parties must define what the confidential information is and then agree how the recipient of the information should treat it. The basic duty that the discloser will want to impose on the recipient is that it will hold the information in strict confidence, will not disclose it to any person without the discloser's consent and often that the recipient undertakes to use the information for a specific purpose only.

NDAs can remain in force in perpetuity, or at least until the confidential information becomes available to the public. They will also require the recipient to destroy or return documents containing confidential information, including copies that have been made. This is important, as it allows the discloser to have control of the information.

Breach of an NDA will usually give rise to damages. However, this is often of little comfort to the victim as it may be more concerned to protect its reputation by preventing further leaks than to seek compensation for leaks that have already happened.

Should you require any further information on the drafting or review of NDAs, please contact 3HR's Commercial team.

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HR

Acceptable conduct at work related social events

Quite often employees, or in fact employers, may wish to arrange social events and activities, such as farewells, Christmas parties, sports days or social networking events, to name but a few.

Whilst it may not be the intention of employees to cause problems, such events can result in sudden arguments, brawls, harassment and could potentially be a nuisance to the employer. Quite commonly, they can result in grievances and claims from unhappy employees.

Employers must remember that they could be held responsible for the acts of their employees. It is important to distinguish between those social events where they will be vicariously liable and those where they will not be and take reasonable steps to prevent an employee from doing anything inappropriate.

Taking reasonable steps:

- Employers should provide a clear policy on the standard of behaviour expected at social events and what kinds of behaviour are unacceptable
- Maintain a clear equal opportunities and anti-harassment policy which should regularly be reviewed
- Set the parameters from the outset to avoid confusion and place emphasis on the implications for misconduct and gross misconduct.
- Organise training and role play sessions to demonstrate what acceptable conduct is and what would be considered as unacceptable conduct
- Have a clear alcohol and drugs policy which should be reviewed regularly and remind the employees of the business stance on alcohol at events, including the implications of failing to comply
- The employer should consider nominating managers to monitor the activities of staff and their intake of alcohol at social events and particularly at work related parties
- Employers should make it clear that it will not be acceptable for their staff to turn up to work either drunk or hung over and the implications of this
- Employers should take any complaints from their staff seriously, following any work related social event and take steps to deal effectively with these including taking disciplinary action if necessary.

For more advice on these issues, please contact us.

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