

Things about Trade Secrets

You Should Know About



To Stay Out of Trouble!





Have you ever heard of such cases?



When I signed a non-disclosure agreement upon entering the company, there were provisions on trade secrets. What are **“trade secrets?”**

People who work in a company, research institution, or other similar entities need to have a proper understanding of trade secrets. Here is an example of a recent case.



In September 2020, a former executive of a major conveyor belt sushi chain **illegally acquired data regarding product costs and other trade secrets**. That November, **after taking a different job as the president of a major rival company, he was arrested for disclosing that data within the rival company**.

The data concerned the cost of sushi provided by the major conveyor belt sushi chain at its various locations, the types of ingredients, and the purchase price of seafood used in that sushi among other items. At his new company, this data was used to create charts comparing the product costs and other data for both companies and shared internally.

In May 2023, the former executive was **sentenced to three years in prison (a four-year suspended sentence) and a fine of 2,000,000 yen.**



I've heard of this case!
I want to make sure I understand trade secrets.

Recently, there is frequent trouble associated with the leakage of blueprints, production manuals, customer lists, supplier lists, and other “trade secrets” that represent the most valuable assets that companies possess!

In the following pages, let's further our understanding of the basics of trade secrets!





What kind of information makes up “trade secrets?”

Information that is important to companies, research institutions, and other such entities and that those entities want to keep confidential constitutes “trade secrets.”

This includes various forms of information that companies, research institutions, and other such entities **generate through sales activities or R&D.**



Trade information

Customer lists/
information and
customer
service
manuals



Technical information

Production methods,
design drawings and molds



Companies and other such entities **may keep such information “confidential”** to maintain their advantages in the market.

There is value in
information being
confidential!

Information that companies and other such entities want to make confidential may constitute **“trade secrets!”**

More detailed conditions are described
on the following page.



Information constitutes “trade secrets” if it satisfies three conditions.



1 Not publicly known

Information that is not known to the general public.

Concrete examples

- Information familiar to only a limited number of related individuals belonging to companies, research institutions, or other entities.
- Information that is not easily available in published material, on the Internet, etc.

2 Useful Information

“Failed experiment data” is also included

Information that is not criminal in nature, such as information related to tax evasion or the discharge of toxic substances, and that which is beneficial to corporations, etc. in a broad sense.



3 Kept secret

Information that is managed so that it can be recognized as confidential information by persons in contact with that information, such as employees and business partner-related individuals.



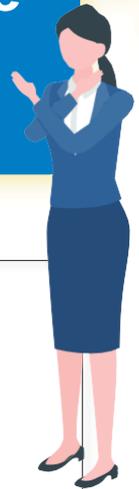
Concrete examples of management

- | | |
|---|--|
| • Indication of “Confidential,” “Internal Use Only,” etc. | • Execution of NDA and exchange of written pledge |
| • Configuration of information with access privileges or storage of it in locked containers | • Preparation/dissemination of work regulations and other internal rules |
| • Indication of “Unauthorized Removal off Premises Prohibited” or “No Entry for Unauthorized Persons” | • Implementation of training on information management/handling |



What are “prohibited actions?”

The illegal (1) Acquisition, (2) Disclosure and (3) Usage of “trade secrets” of companies and other entities



01 Acquisition

Ex. Copying trade secrets from one's place of work onto a hard disc drive for personal use in order to bring them into a new place of work

*Cases based on “legitimate duties” or “legitimate purposes” are acceptable.

Ex. Bringing home trade secrets after obtaining supervisor permission in order to work from home, etc.



02 Disclosure (Leakage)

Ex.1 Sending trade secrets from one's place of work to competitors, etc. in order to receive compensation

Ex.2 Saving trade secrets from a prior place of work onto a cloud server used at one's new place of work and sharing them internally



03 Usage

Ex.1 Preparing materials using illegally-acquired trade secrets belonging to competitors (such as cost and supplier data)

Ex.2 Making sales pitches using trade secrets from a prior place of work (such as customer lists)



These acts may constitute “violations of the Unfair Competition Prevention Act!”

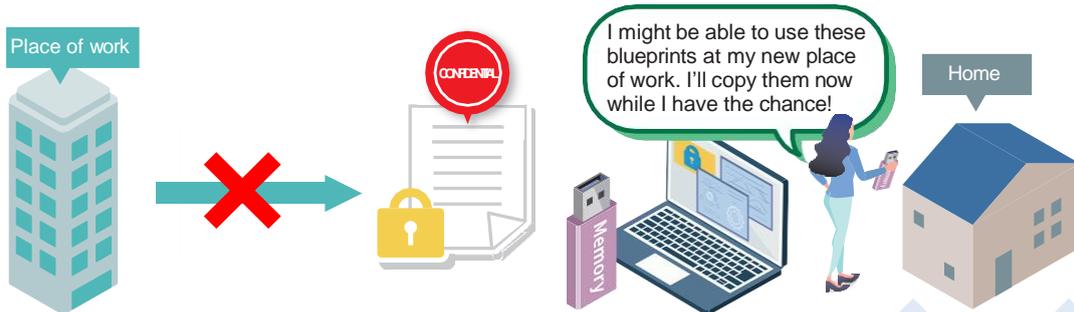


Examining concrete examples that tend to occur in the workplace



case 1

“Acquiring” trade secrets from one’s place of work by **illegally copying them to a privately-owned USB**



- ➡ Taking documents, etc. off the premises without obtaining the permission of one’s place of work is also **unacceptable!**
- ➡ Similarly, sending documents, etc. to one’s personal email address, saving them to a personal cloud server, or committing another similar action without obtaining the permission of one’s place of work is **unacceptable!**
- ➡ However, cases involving legitimate duties or purposes, such as when taking home documents after obtaining supervisor permission in order to work from home, is **acceptable!**

case 2

“Acquiring” trade secrets from one’s place of work by **illegally accessing an internal server and “disclosing”** them to **competitors, etc.**



- ➡ The act of extracting trade secrets from people with access privileges by lying to them or through other means may also be construed as illegal “acquisition” and subject to penalties!



case 3

“Disclosing” trade secrets from a prior place of work to a new place of work

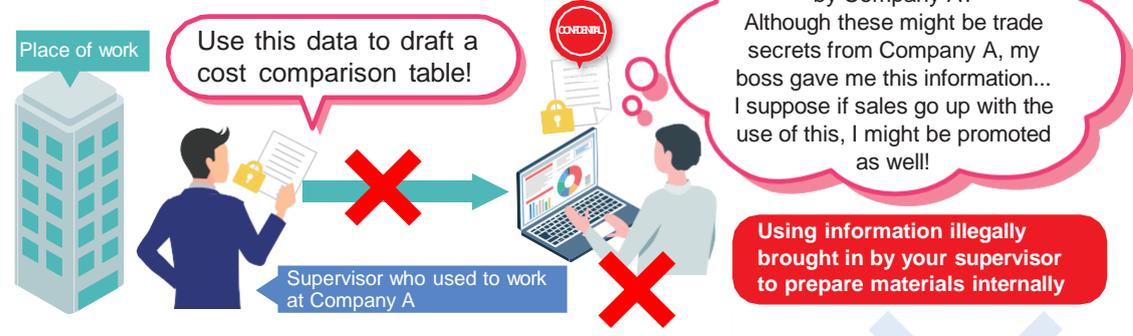


- ➡ Disclosing information to a new place of work as a form of “bearing gifts” is **out of the question!**
- ➡ “Using” trade secrets at a new place of work is also **unacceptable!**

case 4

“Using” internally trade secrets of competitors that were illegally brought in

Cost data on products by Company A that you brought in without the knowledge of Company A, where you worked previously



- ➡ While it goes without saying that your supervisor’s act of illegally bringing in trade secrets is **unacceptable**, “using” those trade secrets despite you being aware of background is equally **unacceptable!**



What happens if I infringe upon trade secrets...?



You could be subject to criminal penalties and/or civil liability...



\\ If that infringement is malicious: //

Criminal penalties

- Imprisonment of up to **10 years**
- Fine of up to **20,000,000 yen**
(Up to 30,000,000 yen for overseas usage, etc.)



Example of actual ruling:

5 years in prison and a fine of 3,000,000 yen
(handed down in 2015 by the Tokyo District Court)

\\ For actual damages to the company: //

Civil liability

- Compensation for damages, etc.



Examples of actual rulings: (Handed down to individual employee)

- Compensation for damages
Approx. 1,000,000,000 yen
(handed down in 2019 by the Tokyo District Court)
- Compensation for damages
Approx. 400,000,000 yen
(handed down in 2002 by the Fukuoka District Court)



There are other possibilities in which you may be subject to disciplinary action by your place of work based on its work regulations.

Be careful of such cases.

Infringing on trade secrets, even if the purpose of doing so is for the benefit of a third party and not your own, is **unacceptable!**

Even if that purpose is for gaining non-economic **benefit (such as to one-up someone at a new place of work)** as well as money or another form of economic benefit, **it is still unacceptable!**

That third party also includes overseas government institutions, individuals related to those institutions and the like. **For that reason, even if the purpose in question is for the benefit of overseas government institutions, individuals related to those institutions, etc. it is still unacceptable!**

The mere fact that the act is based on a foreign law requiring a foreign government to provide information cannot be justified.

Ex.

Case in which a former employee leaked trade secrets to a Russian diplomat
(judgment handed down in 2020 by the Tokyo District Court)



How can I protect myself ?

<Key Points for Keeping Out of Trouble> In your routine duties...



Verify what information falls under trade secrets,

out of the information that you come in contact with at your workplace.



Make it a point to verify the internal regulations and rules on information management at your place of work and **form a proper understanding** of

what kind of management is expected

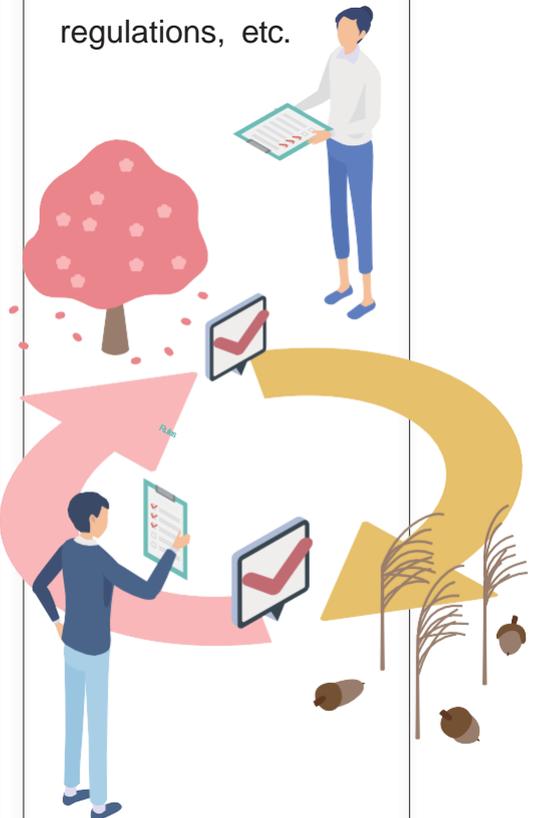
and

what you are not allowed to do.



Regularly verify what information you come in contact with at your workplace,

whether there have been any updates to associated internal regulations, etc.



<Key Points for Keeping Out of Trouble>

If you are planning on changing jobs or working for yourself...



Make sure you do the following before changing jobs or working for yourself!

Do not take any trade secrets belonging to your previous place of work, such as by copying them to your PC for personal use or sending them to your private email address, as a "bearing gift" when you change jobs or start your own business.

In the event that you have trade secrets belonging to your previous place of work, **properly delete them.**



Make it a point to **verify the content and conditions of any written pledges** when resigning from a job and **form a proper understanding of things you are not allowed to do.**

Should you have any doubts regarding the content or conditions of a written pledge or other similar document or are unsure how to determine what constitutes trade secrets, **check with your place of work and make sure you are on the same page.**



Make sure you do the following after you change jobs or started working for yourself !

Make it a point **not to carelessly bring information belonging to a prior place of work** into your new place of work or the place where you work for yourself.



Make sure you **don't misappropriate trade secrets belonging to a prior place of work at your new place of work or the place where you work for yourself.**



If you run into trouble...



When you are unsure what constitutes trade secrets or are unsure what you must or must not do

Start by properly asking your place of work (your supervisor, etc.) **for advice.**

If you also want to ask an outside party for advice

INPIT (National Center for Industrial Property Information and Training)

Trade Secret Support Counter **Free of charge**

*Available only in Japanese.

TEL: 03-3581-1101 (Ext.: 3823)

URL:<https://www.inpit.go.jp/katsuyo/tradeseecret/madoguchi.html>

Email:ip-sr01@inpit.go.jp

IPL Net Japan (The Intellectual Property Lawyers Network Japan)

Consultation fees Initial consultation: 10,000 yen per hour (tax excl.)

URL:<https://iplaw-net.com/>

TEL (Contact Point List):<https://iplaw-net.com/telephone>

Consultation Request Form:<https://iplaw-net.com/consultation>

If you want to know more about **trade secrets**, **the Unfair Competition Prevention Act** or **information leakage countermeasures**

Intellectual Property Policy Office Website



Management Guidelines for Trade Secrets



Text of Unfair Competition Prevention Act



Handbook for Protection of Confidential Information



*Available only in Japanese.

*Available only in Japanese.



Intellectual Property Policy Office, Economic and Industrial Policy Bureau

TEL:03-3501-1511 Ext.: 2631

Trade secrets METI



<https://www.meti.go.jp/english/policy/economy/chizai/chiteki/index.html>

