

Trade secrets require careful treatment



New legislation helps, says Mr Thawat.

Both sides should get written clarification

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Jom is a key account manager at a leading consumer product company. He has been with the firm for a year before deciding to join a major rival. As soon as he hands his resignation letter, giving 30 days' notice, to his direct boss, the company immediately terminates his employment for fear that he may release company secrets to the rival.

Such cases are not uncommon in Thailand, even if it is considered inhumane or unethical for a company to treat its staff in such a way. Employees in such situations have high potential of winning favourable rulings in the Labour Court if provisions related to trade secrets are not clearly and explicitly stated in company policies

and regulations in the first place.

Because few companies have such provisions clearly stated, they pay a heavy price in cases of unlawful termination, according to Thawat Damsard, a legal partner at Tilleke & Gibbins International Ltd.

According to the law, companies are required to pay severance to employees on termination of employment. For those working for at least 120 days but less than one year, the requirement is 30 days' pay. For employees who have worked for one to three years, at least three months' wages must be paid. At least six months' wages are due to employees who have worked for at least three years but less than six years. For workers with six to 10 years, the payment is eight months, rising to 10 months' pay for those working for more than 10 years.

Companies genuinely concerned that departing employees will take business secrets with them do have some relatively

painless and creative ways out. One possibility is to ask the employee to take leave until his last official day, with the full salary to be paid. Technically, the person is still employed and would face heavy consequences should he divulge proprietary information during that period.

For companies that want to guard against any misunderstanding or legal complication, the best approach is to define the issue in writing in their policies and regulations.

The good news from the employer's standpoint is that the Trade Secrets Act, which was enacted last year, provides extensive legal coverage of commercial assets of companies.

For instance, Mr Thawat suggested, companies may include in their policies clauses stating that employees are prohibited from joining rival firms or embarking on ventures similar to their former careers for a certain period of time.

"It is more ethical to put the agreement

down in writing and make it clear to the employees in the first place," he said.

As well, the Trade Secrets Act protects companies from unethical revelation of secrets by the employees without the need to have those secrets registered. But certainly there is no harm in the companies deciding to stress the issue further by stating it in their policies.

According to the law, a trade secret means trade information not yet publicly known, which holds commercial value or benefit. There are two main areas of sensitivity: industrial and commercial. Industrial secrets include technology, production and processes, chemical formulas and the like. Commercial secrets apply to business operations, financial information, client databases, any new deals or projects, and many more.

Since a trade secret is considered a company's commercial property, the disclosure, deprivation or use of it without consent of the owner will be considered

illegal. Violators may face jail terms of up to one year and/or fines up to 200,000 baht.

Mr Thawat said, however, that any agreements have to be fair to both employers and employees. There have been instances, he said, in which companies barred their employees from joining rivals or starting the same businesses for five to 10 years after leaving the firm.

"That can be considered a bit unjust as it totally limits employees from making a living. What can they do if they can't practise their expertise for that long a period of time?" he asked.

While companies have a duty to clearly spell out what they view as trade secrets, employees have a duty to thoroughly read all work contracts prior to signing them.

If there is anything contentious, one should discuss it with the employer, though the latter as the possessor of the secrets is likely to have more bargaining power in the final analysis.