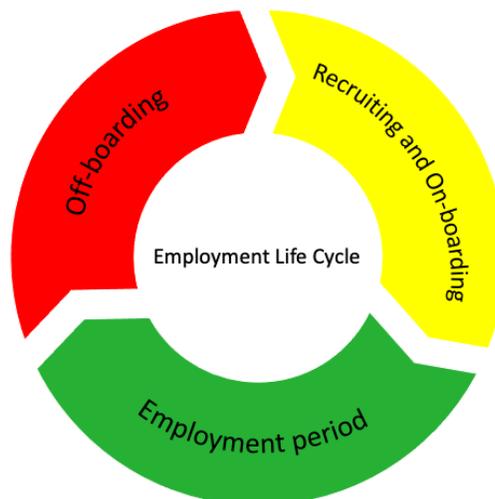


The Sedona Conference
Commentary on Protecting Trade Secrets throughout the Employment
Life Cycle
(June 2021 public comment version)

Employees are at the center of most aspects of trade secrets: Trade secrets cannot exist without the work of employees, cannot be protected without the efforts of employees, and would rarely be compromised or lost without the conduct of employees. This *Commentary on Protecting Trade Secrets throughout the Employment Life Cycle* focuses on the inherent potential tensions this creates in the employer-employee relationship.

While in most circumstances, employers and employees will be aligned in protecting trade secrets for their mutual benefit at the beginning and during the employment relationship, at the end of the relationship, there is an inherent tension between an employer's interest in protecting its trade secrets and an employee's interest in engaging in future employment. This tension is further complicated by the fact that, although the departing employee is at the end of one employment life cycle, they are typically simultaneously at the beginning of the next, where the former's employer's risk of loss of its trade secrets corresponds directly to the new employer's risk of infiltration of those same trade secrets.

This *Commentary* addresses these issues through a chronological view of the employment relationship, from the recruiting and on-boarding, to the period of employment, to the off-boarding, and back to the on-boarding, as follows:



This *Commentary* presents four Principles for protecting trade secrets in litigation about them:



- Principle 1** There is an inherent tension between an employer’s interest in protecting its trade secrets and an employee’s interest in engaging in future employment. Employers should tailor their policies and procedures to guard against the risk of unlawful use or disclosure of their trade secrets, while avoiding inappropriately restricting their former employees’ application of their general knowledge, skill, and experience in their next employment.
- Principle 2** Employers should provide timely and sufficient notice of what they claim as their trade secrets, the policies and procedures to be followed by employees to protect those trade secrets, and any restrictions the employers intend to impose on the future mobility of their prospective and current employees.
- Principle 3** Employees and new employers should take into account the legitimate interests of former employers in their trade secrets, and employees and new employers should take reasonable steps to mitigate against the risks of misappropriation of the former employers’ trade secrets.
- Principle 4** In response to an impending employee departure, the employer should identify, address, and communicate as appropriate legitimate concerns about the departing employee’s compliance with their continuing obligation to protect the employers’ trade secrets.

The full text of *The Sedona Conference Commentary on Protecting Trade Secrets throughout the Employment Life Cycle*, June 2021 public comment version, is available free for individual download from

The Sedona Conference website at:

[https://thesedonaconference.org/publication/Commentary on Protecting Trade Secrets in Litigation About Them](https://thesedonaconference.org/publication/Commentary_on_Protecting_Trade_Secrets_in_Litigation_About_Them)

© 2021 The Sedona Conference. Reprinted courtesy of The Sedona Conference.