

PUBLICATION

Tennessee Trade Secrets Update

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The Tennessee Court of Appeals, in *Hamilton-Ryker v. Keymon*, 2010 Tenn. App. LEXIS 55 (Tenn. Ct. App. 2010), recently affirmed an award of almost \$1 million to an employer who sued a temporarily laid off employee for breach of contract, misappropriation of confidential information, and violation of the Tennessee Uniform Trade Secrets Act (TUTSA). The employee had e-mailed documents related to a customer of her employer from her work e-mail address to her personal e-mail address. The customer subsequently ended the business relationship with the employer. The trial court entered judgment for the employer, and the Tennessee Court of Appeals affirmed, finding that: 1) the information e-mailed to the employee's personal e-mail was a trade secret; 2) the covenant not to compete was enforceable despite the lack of any geographic limitation; and 3) the evidence supported the award of damages, including punitive damages.

The Court reasoned that even though the employee might have been able to obtain the information independently, it was nonetheless trade secret information protected by the Act because she obtained the information from her former employer instead of by independent means. The Court also reasoned that the employee misappropriated a trade secret because she received an economic benefit between the time she obtained the information and the time she began competing with her former employer by personally delivering services that were performed under the client's contract with the former employer.

TUTSA provides for exemplary damages (a triple of actual damages) to be awarded in cases where there is "willful and malicious misappropriation," a different standard from the traditional standard for punitive damages. Tenn. Code Ann. § 47-25-1704(b). While the employee argued that the traditional standard for punitive damages (a showing of hatred, ill will or spite) should be applied, the Court determined that in trade secret misappropriation cases, no such showing was necessary. Instead, the employee acted maliciously as evidenced by her application for unemployment compensation, acceptance of a severance package upon her layoff, and her underhandedly accessing her former employer's trade secret information.

Employers should be aware that Tennessee courts may now offer them more protection by re-categorizing information that has not traditionally been considered a trade secret. Rather than focusing solely on whether information is readily ascertainable by appropriate public means, the Court placed a great emphasis on the means by which the individual obtained the information. Moreover, under TUTSA, it may be easier to prove exemplary damages.

To learn how your business can benefit from this recent ruling, please contact your Baker Donelson attorney or any of our nearly 70 Labor & Employment attorneys, located in *Birmingham, Alabama; Atlanta, Georgia; Baton Rouge, Mandeville and New Orleans, Louisiana; Jackson, Mississippi; and Chattanooga, Johnson City, Knoxville, Memphis and Nashville, Tennessee.*

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