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Court Enjoins Employee Solicitation

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Calling trade secret protection "fundamental to the protection of our free market system," a California appellate court has enjoined an employee from calling on his former employer's customers or soliciting its employees. In a February 14, 2005 decision, ReadyLink Healthcare v. Jerome Cotton, the California Court of Appeal upheld an injunction precluding ReadyLink's former employee, Cotton, "from soliciting ReadyLink employees and customers." While acknowledging that the identities of ReadyLink's employees and customers "may have been available to the public and/or ReadyLink's competitors," the Court of Appeal held that such information still qualified for protection because it "was procured by substantial time, effort, and expense."

The Facts of the Case. ReadyLink is a temporary staffing service which provides nurses to healthcare providers. According to declarations it submitted in the case, ReadyLink "has invested a great deal of time, money, and effort in developing its database of nurses and healthcare provider customers." While employed by ReadyLink as a nurse recruiting agent, Cotton was caught on videotape entering ReadyLink's offices at night and copying company records. A police search of Cotton's home revealed one or two boxes of stolen ReadyLink documents. ReadyLink fired Cotton and he went to work for a competitor. ReadyLink sued Cotton and his new employer, and obtained a preliminary injunction precluding Cotton from soliciting its employees or customers. Cotton appealed.

In affirming the trial court's injunction, the Court of Appeal recognized California's strong public policy allowing employees "to engage in businesses and occupations of their choosing." However, the Court of Appeal held that "fundamental to the preservation of our free market economic system, there is 'the concomitant right to have the ingenuity and industry one invests in the success of the business or occupation protected from the gratuitous use of that "sweat-of-the-brow" by others.'" The Court of Appeal found that both the Trade Secrets Act and California's Unfair Competition Law entitled ReadyLink to an injunction preventing Cotton's use of its information.

Lessons for Employers. The decision demonstrates how planning in advance can help employers protect commercially sensitive information. ReadyLink prevailed in large part because it required its employees to sign confidentiality and non-disclosure agreements. The agreements specifically identified the proprietary information which employees could not disclose, and prohibited future solicitation of ReadyLink's customers or employees. While the Court of Appeal declined to rule on whether the agreements were enforceable, it found that ReadyLink "took reasonable steps to insure the secrecy of its trade secret information" by obtaining the agreements. In addition, ReadyLink succeeded because it was able to document the efforts it had undertaken to obtain the trade secret information it sought to protect.

Risks in Hiring a Competitor's Employees. The decision also highlights the risks employers face in hiring employees from a competitor. Employers should make sure that new employees do not bring with them any documents or information obtained from a previous employer, and employees should be clearly instructed not to use any such materials. Employers should ask new employees to attest in writing that they do not possess anything belonging to a former employee, and that they are not bound by any contract which would prohibit them from carrying out their new job duties.