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Deposition Questions in a Trade Secret Misappropriation and Breach of Restrictive Covenant Action (Plaintiff Employer to Defendant)

The deposition questions in this form are provided by way of example only. Each question should be followed with appropriate further inquiry. You should review all rules concerning depositions applicable in the jurisdiction where your case is pending.

These annotated deposition questions do not cover all potential state law distinctions concerning restrictive covenants and trade secret protection. You should check any relevant state and local laws.

Section 1. Non-Compete Deposition Questions

1. Did you work at [Plaintiff company]?
2. For what period of time did you work at [Plaintiff company]?
3. What was your position at [Plaintiff company]?
4. What were your duties and responsibilities at [Plaintiff company]?
5. Did you sign a non-compete agreement at [Plaintiff company]?
6. Do you remember its contents?
7. You agreed that during [insert the period set forth in the non-compete agreement] you would not engage in any competitive activity, is that correct?
8. When did your employment with [Plaintiff company] end?
9. Where have you worked since your employment with [Plaintiff company] ended?
10. During what period have you worked for your new company?
11. What type of business is your new company?
12. What is your position at your new company?
13. What have been your duties and responsibilities with your new company?



Section 2. Customer Non-Solicitation Deposition Questions

1. Did you work at [Plaintiff company]?
2. For what period of time did you work at [Plaintiff company]?
3. What was your position at [Plaintiff company]?
4. What were your duties and responsibilities at [Plaintiff company]?
5. Did you sign a customer non-solicitation agreement at [Plaintiff company]?
6. Do you remember its contents?
7. You agreed that during [insert the period set forth in the customer non-solicitation agreement] you would not engage in the solicitation of [Plaintiff company's] customers, is that correct?
8. While working at [Plaintiff's company], did you work with customers of [Plaintiff's company]?
9. Which customers did you work with?
10. How were you introduced to these customers?
11. How did you interact with these customers?
12. How often did you interact with these customers?
13. When did your employment with [Plaintiff company] end?
14. Where have you worked since your employment with [Plaintiff company] ended?
15. During what period have you worked for your new company?
16. What type of business is your new company?
17. What is your position at your new company?
18. What have been your duties and responsibilities with your new company?
19. Have you spoken with any [Plaintiff's company] customers since you separated from employment with [Plaintiff company]?
20. If yes, which customers?
21. What did you talk about with each customer?
22. Have you completed any sales to any [Plaintiff's company] customers since you separated from employment with [Plaintiff company]?
23. Have you contracted with [Plaintiff's company] customers since you separated from employment with [Plaintiff company]?
24. Have you attempted to engage in business with any [Plaintiff's company] customers since you separated from employment with [Plaintiff company]?



Section 3. Employee Non-Solicitation Deposition Questions

1. Did you work at [Plaintiff company]?
2. For what period of time did you work at [Plaintiff company]?
3. What was your position at [Plaintiff company]?
4. What were your duties and responsibilities at [Plaintiff company]?
5. Did you sign an employee non-solicitation agreement at [Plaintiff company]?
6. Do you remember its contents?
7. You agreed that during [insert the period set forth in the employee non-solicitation agreement] you would not engage in the solicitation of [Plaintiff company's] employees, is that correct?
8. When did your employment with [Plaintiff company] end?
9. Where have you worked since your employment with [Plaintiff company] ended?
10. During what period have you worked for your new company?
11. What type of business is your new company?
12. What is your position at your new company?
13. What have been your duties and responsibilities with your new company?
14. Have you spoken with any [Plaintiff's company] employees since you separated from employment with [Plaintiff company]?
15. If yes, who?
16. When?
17. What did you talk about with each employee?
18. Have you tried to recruit any of [Plaintiff's company] employees to work for any company for which you have worked since you separated from employment with [Plaintiff company]?
19. If yes, who?
20. When?
21. What efforts did you take in trying to recruit each of these employees?
22. Have you successfully recruited any of [Plaintiff's company] employees to work for any company for which you have worked since you separated from employment with [Plaintiff company]?

23. If yes, which [Plaintiff's company] employees have worked at any company for which you have worked since you separated from employment with [Plaintiff company]?
24. During what periods of time have each of these employees worked at any company for which you have worked since you separated from employment with [Plaintiff company]?
25. What efforts did you take to recruit each of these employees?


Section 4. Misappropriation of Trade Secrets/Breach of Confidentiality Agreement Deposition Questions

1. Did you work at [Plaintiff company]?
2. For what period of time did you work at [Plaintiff company]?
3. What was your position at [Plaintiff company]?
4. What were your duties and responsibilities at [Plaintiff company]?
5. Did you sign a confidentiality agreement?
6. Do you remember its contents?
7. You agreed that you would not disclose [Plaintiff company's] confidential information, is that correct?
8. Did you receive an employment handbook or other policy with confidentiality and/or non-disclosure obligations?
9. What kind of training did [Plaintiff company] provide to you?
10. What confidential information did [Plaintiff company] allow you to access during the course of your employment with [Plaintiff company]?
11. Did [Plaintiff company] limit access to such information?
12. How?
13. Did [Plaintiff company] take other measures to keep this information confidential?
14. If yes, what measures?
15. When did your employment with [Plaintiff company] end?
16. Where have you worked since your employment with [Plaintiff company] ended?
17. During what period have you worked for your new company?

Related Content


For detailed information on state laws concerning restrictive covenants and trade secrets, see

> [NON-COMPETES AND TRADE SECRET PROTECTION STATE PRACTICE NOTES CHART](#)

 **RESEARCH PATH:** [Labor & Employment > Non-competes and Trade Secret Protection > Restrictive Covenants > Practice Notes](#)


For additional information on restrictive covenants and trade secrets, see

> [NON-COMPETE AGREEMENTS: KEY NEGOTIATION, DRAFTING AND LEGAL ISSUES](#)

 **RESEARCH PATH:** [Labor & Employment > Non-competes and Trade Secret Protection > Restrictive Covenants > Practice Notes](#)


For guidance on drafting non-compete agreements, see

> [NON-COMPETE AGREEMENTS CHECKLIST \(BEST DRAFTING PRACTICES FOR EMPLOYERS\)](#)

 **RESEARCH PATH:** [Labor & Employment > Non-competes and Trade Secret Protection Restrictive Covenants > Checklists](#)


For relevant considerations in drafting customer and employee non-solicitation agreements, see

> [CUSTOMER AND EMPLOYEE NON-SOLICITATION AGREEMENTS: KEY NEGOTIATION, DRAFTING, AND LEGAL ISSUES](#)

 **RESEARCH PATH:** [Labor & Employment > Non-competes and Trade Secret Protection > Restrictive Covenants > Practice Notes](#)



18. What type of business is your new company?
19. What is your position at your new company?
20. What have been your duties and responsibilities with your new company?
21. What knowledge do you rely on to perform your job duties?
22. Where did you gain your knowledge of that specific information?


To review the full list of drafting notes and alternate clauses please see the complete form in Lexis Practice Advisor by following the research path. 

[Kevin Cloutier](#) is a partner in the Labor and Employment practice group and co-leader of the Non-Compete and Trade Secrets team in the Chicago office of Sheppard, Mullin, Richter & Hampton LLP. His national practice focuses on all areas of labor and employment law, with an emphasis on employment-related litigation and proactive counseling of management-side clients. He has litigation and first-chair trial experience before state and federal trial and appellate courts, arbitrators, the Financial Industry Regulatory Authority, the National Labor Relations Board (NLRB), and administrative agencies, and has successfully argued multiple law-changing and precedent-setting federal appeals on behalf of his clients. Mr. Cloutier advises clients on a wide range of employment-related issues and has particular expertise in restrictive covenant and non-competition matters, whistleblower claims, and internal investigations. He has successfully enforced restrictive covenant, non-compete, and trade secret claims on behalf of his clients in more than 20 states. He also operates as a general employment counselor to his clients and regularly advises and coaches human resource professionals and other business executives on how to comply with various human resources and employment laws. **Shawn Fabian** is an associate in the firm's Labor and Employment practice group. He represents management-side clients before federal and state courts across the country and before administrative agencies including the Department of Labor, the Equal Employment Opportunity Commission, the NLRB, and various state and municipal human rights commissions and labor agencies. He can be reached at sfabian@sheppardmullin.com. **Mikela Sutrina** is an associate in the firm's Labor and Employment practice group. She advises private and public employers on a range of workplace issues, such as compliance with all applicable federal, state, and local laws, discrimination and harassment, safety, performance management, leaves of absence, safety, compensation, and terminations. She can be reached at msutrina@sheppardmullin.com.

Related Content


For essential elements of a non-disclosure agreement, see

> [NON-DISCLOSURE AGREEMENTS: KEY NEGOTIATION, DRAFTING, AND LEGAL ISSUES \(PRO-EMPLOYER\)](#)

 **RESEARCH PATH:** [Labor & Employment > Non-competes and Trade Secret Protection > Restrictive Covenants > Practice Notes](#)


For direction on drafting enforceable employee confidentiality agreements, see

> [CONFIDENTIALITY AGREEMENTS CHECKLIST \(BEST DRAFTING PRACTICES FOR EMPLOYERS\)](#)

 **RESEARCH PATH:** [Labor & Employment > Non-competes and Trade Secret Protection > Restrictive Covenants > Checklists](#)


For an overview of key trade secret law principles, see

> [TRADE SECRET FUNDAMENTALS](#)

 **RESEARCH PATH:** [Labor & Employment > Non-competes and Trade Secret Protection > Protecting Trade Secrets > Practice Notes](#)

For guidance on substantive and procedural considerations involved in pursuing legal action to protect employer trade secrets, see

> [RESTRICTIVE COVENANT AND TRADE SECRET MISAPPROPRIATION CLAIMS: KEY INITIAL CONSIDERATIONS AND TIPS FOR SEEKING TROS, PRELIMINARY INJUNCTIONS, AND OTHER RELIEF](#)

 **RESEARCH PATH:** [Labor & Employment > Employment Litigation > Restrictive Covenants and Trade Secrets > Practice Notes](#)



RESEARCH PATH: [Labor & Employment > Non-competes and Trade Secret Protection > Restrictive Covenants > Forms](#)