

Trade Secret Laws: Wisconsin

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A Q&A guide to state law on trade secrets and confidentiality for private employers in Wisconsin. This Q&A addresses the state-specific definitions of trade secrets and the legal requirements relating to protecting them. Federal, local, or municipal law may impose additional or different requirements. Answers to questions can be compared across a number of jurisdictions (see [Trade Secret Laws: State Q&A Tool](#)).

Overview of State Trade Secret Law

Definition of Trade Secret

Reasonable Efforts to Maintain Secrecy

Trade Secret Misappropriation Claims

Defenses

Statute of Limitations

Other Related Claims

Remedies

Contractual Protections

Miscellaneous

Overview of State Trade Secret Law

1. List the laws (statutes and regulations) by name and code number, both criminal and civil, that your state has adopted governing trade secrets.

Civil Statutes

Wisconsin has adopted the Wisconsin Uniform Trade Secrets Act ([Wis. Stat. § 134.90](#)), based on the model Uniform Trade Secrets Act (UTSA).

Criminal Statutes

The intentional theft of **trade secrets** is a Class I felony under [Wis. Stat. § 943.205](#). This statute does not prevent anyone from using general skills or knowledge gained while employed by the owner of a trade secret ([Wis. Stat. § 943.205\(5\)](#)).

Additionally, the following laws are not directly related to trade secrets, but may be implicated in Wisconsin trade secrets cases:

- [Wis. Stat. § 943.70](#) (covering crimes against computers, computer equipment, supplies, data, and programs).
- [Wis. Stat. § 943.201](#) (prohibiting the unauthorized use of an individual's personal identifying information or documents).
- [Wis. Stat. § 943.203](#) (prohibiting the unauthorized use of an entity's identifying information or documents).

(See, e.g., *Burbank Grease Servs., LLC v. Sokolowski*, 717 N.W.2d 781, 785 (Wis. 2006).)

2. Has your state adopted the model Uniform Trade Secrets Act (UTSA)? If so, please:

- Identify which among the statutes listed in response to Question 1 is your state's adopted version of the UTSA.
- Describe any significant differences between your state's adopted version and the model UTSA.

Adopted Version of Model UTSA

Wisconsin has adopted the model Uniform Trade Secrets Act (UTSA) with slight modification. It is referred to as the Wisconsin Uniform Trade Secrets Act (WUTSA) ([Wis. Stat. § 134.90](#)). For an overview of the UTSA, see [Practice Note, Protection of Employers' Trade Secrets and Confidential Information: Trade Secrets](#).

Significant Differences Between Adopted Version and Model UTSA

The WUTSA largely adopts the UTSA language. Unlike the UTSA, however, the WUTSA:

- Omits "through electronic or other means" from the definition of "improper means" ([Wis. Stat. § 134.90\(1\)\(a\)](#); [UTSA § 1\(1\)](#)).
- Adds a definition for "readily ascertainable" ([Wis. Stat. § 134.90\(1\)\(b\)](#)).
- Does not separately define "person", but takes the default Wisconsin statutory definition of "person" from [Wis. Stat. § 990.01\(26\)](#).
- Eliminates the "material change in position" requirement for misappropriation that involves the disclosure or use of a trade secret, without express or implied consent, by a person who acquired a trade secret by accident or mistake ([Wis. Stat. § 134.90\(2\)](#); [UTSA § 1\(2\)](#)).
- Before the court can issue an **injunction** or restraining order, requires that a complainant:
 - plead each alleged trade secret in sufficient detail to inform the defendant of the nature of the complaint; or
 - disclose the alleged trade secret in writing, if the court orders it.

([Wis. Stat. § 134.90\(3\)](#); [UTSA § 2](#).)

- Omits the UTSA's section on the **statute of limitations** ([UTSA § 6](#)), taking the three-year statute of limitations period from [Wis. Stat. § 893.51\(2\)](#).
- Omits the UTSA's severability provision ([UTSA § 10](#)), relying on [Wis. Stat. § 990.001\(11\)](#).
- Omits the UTSA's "time of taking effect" provision ([UTSA § 11](#)).

3. List any common law protections afforded to trade secrets. If common law protections are afforded to trade secrets, are they preempted by available state statutes?

In Wisconsin, common law protections for trade secrets include, but are not limited to:

- Breach of contract claims.
- Claims for misappropriation of confidential information that does not fall under the statutory definition of a trade secret ([Burbank Grease Servs., LLC, 717 N.W.2d at 792-93, 798](#)).

The Wisconsin Uniform Trade Secrets Act (WUTSA) preempts conflicting:

- Tort law.
- Restitutionary law.
- Any other Wisconsin law providing civil remedies for trade secret misappropriation.

(Wis. Stat. § 134.90(6)(a).)

The WUTSA, however, does not affect the following types of remedies:

- Contractual remedies, whether or not based on misappropriation of a trade secret.
- Civil remedies that are not based on misappropriation of a trade secret.
- Criminal remedies, whether or not based on misappropriation of a trade secret.

(Wis. Stat. § 134.90(6)(b).)

Definition of Trade Secret

4. How does your state define a trade secret under each law identified in [Question 1](#) (statute or regulation) and [Question 3](#) (common law)?

The Wisconsin Uniform Trade Secrets Act (WUTSA) defines a trade secret as information that:

- Includes a:
 - formula;
 - pattern;
 - compilation;
 - program;

- device;
 - method;
 - technique; or
 - process.
-
- Derives actual or potential independent economic value from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.
 - Is the subject of reasonable efforts under the circumstances to maintain its secrecy.

(Wis. Stat. § 134.90(1)(c).)

Under the WUTSA, "readily ascertainable" information does not include information that is either accessible:

- Through a licensing agreement.
- By an employee who is under a confidentiality agreement with their employer.

(Wis. Stat. § 134.90(1)(b).)

The WUTSA definition of a trade secret also applies to [Wis. Stat. § 943.205](#) (criminalizing the theft of trade secrets) ([Wis. Stat. § 943.205\(2\)\(e\)](#)).

5. Describe any significant cases in your state creating, modifying, or clarifying the definition of a trade secret.

Although the Wisconsin Unified Trade Secret Act's definition of a trade secret replaced the six-factor test adopted from the Restatement (First) of Torts, the Wisconsin Supreme Court has held that the following factors still provide "helpful guidance" when evaluating whether information is a trade secret:

- The extent to which the information is known outside the owner's business.
- The extent to which employees and others involved in the owner's business know the information.

- The extent of the measures that the trade secret owner takes to protect the information's secrecy.
- The value of the information to the owner and competitors.
- The amount of effort or money the trade secret owner spent to develop the information.
- The ease or difficulty with which others can properly acquire or duplicate the information.

(*Minuteman, Inc. v. Alexander*, 434 N.W.2d 773, 777-78 (Wis. 1989).)

6. What are examples of information that courts in your state:

- Have found to be trade secrets?
- Have not found to be trade secrets?
- Have found not to be trade secrets as a matter of law?

Trade Secrets

Wisconsin courts and federal courts applying Wisconsin law have found the following types of information to be trade secrets under the specific facts of each case:

- Customer lists under certain circumstances, for example, where the party claiming a trade secret had filtered down information to create a defined, manageable, and economically viable universe of uniquely receptive potential customers (*Am. Fam. Mut. Ins. Co. v. Roth*, 485 F.3d 930, 933 (7th Cir. 2007)).
- Product design (*Sokol Crystal Prods., Inc. v. DSC Commc'ns Corp.*, 1993 WL 597382, at *2 (W.D. Wis. Mar. 30, 1993)).
- Manufacturing processes and manuals (*3M v. Pribyl*, 259 F.3d 587, 596 (7th Cir. 2001)).
- Methodologies for the design of management information systems (*M. Bryce & Assocs., Inc. v. Gladstone*, 319 N.W.2d 907, 911-12 (Wis. Ct. App. 1982)) (Pre-Wisconsin Uniform Trade Secrets Act).
- Business information continuously used in the operation of a business (*Wis. Elec. Power Co. v. Pub. Serv. Comm'n of Wis.*, 329 N.W.2d 178, 182 (Wis. 1983)) (Pre-Wisconsin Uniform Trade Secrets Act).

- Chemical formulas (*Minuteman*, 434 N.W.2d at 778).

Not Trade Secrets

The following are not protectable trade secrets:

- The amount of a manufacturing company's confidential bid (*N. Highland Inc. v. Jefferson Mach. & Tool Inc.*, 2016 WL 1689972, at *4-6 (Wis. Ct. App. 2016)).
- A video recording and pictures of a computer screen that displayed customer information generated with a database program, where the actual database program had not been acquired (*Poblocki Paving Corp. v. Johnson & Sons Paving, LLC*, 2016 WL 1700390, at *4 (E.D. Wis. Apr. 27, 2016)).
- Customer lists where:
 - the group of purchasers for that industry is neither fixed nor small;
 - the products are used in a variety of common items; and
 - the target market for the products is broad.

(*Nalco Chem. Co. v. Hydro Techs., Inc.*, 984 F.2d 801, 803-04 (7th Cir. 1993).)

- Customer pricing and other customer information that did not meet the Wisconsin Uniform Trade Secrets Act's statutory definition of trade secret (*Burbank Grease Servs., LLC v. Sokolowski*, 693 N.W.2d 89, 96-97 (Wis. Ct. App. 2005), *aff'd in part, rev'd in part on other grounds*, 717 N.W.2d 781 (Wis. 2006)).
- A process for manufacturing plastic bags that was generally known or readily ascertainable by others in the field (*Automated Packaging Sys., Inc. v. Sharp Packaging, Inc.*, 1989 WL 223755, at *3 (E.D. Wis. 1989)).
- Computer software where plaintiff did not describe with sufficient particularity a protectable trade secret, and where the plaintiff's confidentiality agreement with employees imposed only a one-year period after termination of employment during which employees could not divulge trade secrets (*ECT Int'l, Inc. v. Zwerlein*, 597 N.W.2d 479, 482, 485 (Wis. Ct. App. 1999)).

Not Trade Secrets as a Matter of Law

There are no known cases where Wisconsin courts have held certain information not to be a trade secret as a matter of law. Whether information is afforded trade secret protection is a question of both law and fact (*Minuteman*, 434 N.W.2d at 777-78).

7. To what extent have:

- Customer, client, or subscriber lists been given trade secret protection?
- Former employees been enjoined from using former employer's customer information?

Customer lists may receive protection under the Wisconsin Uniform Trade Secrets Act if they:

- Derive independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means to other persons who can obtain economic value from its disclosure or use.
- Are the subject of reasonable efforts to maintain its secrecy.

(Wis. Stat. § 134.90(1)(c); see [Question 4: Definition of a Trade Secret.](#))

Whether a customer list meets the definition of a trade secret is a fact-intensive inquiry.

For example, the customer list in *American Family Mutual Insurance Co. v. Roth* qualified as a trade secret because:

- Customer names and information had been assembled and filtered so that the information represented a "defined, manageable, and economically viable universe of uniquely receptive potential customers."
- The customer list and information had been entered into the plaintiff's private database, where employees had access only to the information in the database that concerned the customers the employee served.
- Employees had signed agreements stating that any information uploaded into the database became the exclusive property of the plaintiff.

(*Am. Fam. Mut. Ins. Co.*, 485 F.3d at 931-34.)

The customer list in *Nalco Chemical Co. v. Hydro Technologies, Inc.* was not afforded trade secret protection because:

- The customer base was neither fixed nor small.
- The target market was broad, encompassing commercial buildings, universities, schools, and hospitals.
- The products that the plaintiff and defendant sold were used in various common items, including industrial boilers, heating and cooling systems, and waste treatment systems.

With a well-known, easily ascertainable, and wide pool of actual and potential customers, the court found that the customer list did not meet the definition of a trade secret. (*Nalco*, 984 F.2d at 804.)

Former employees can be enjoined from using their former employer's customer information. To obtain an injunction, a plaintiff must:

- Plead in sufficient detail each alleged trade secret.
- If ordered by the court, submit a written disclosure of each alleged misappropriated trade secret.

(Wis. Stat. § 134.90(3)(a).)

Injunctions are meant to preserve the status quo and eliminate the commercial advantage a person may have by misappropriating trade secrets (Wis. Stat. § 134.90(3)(a)(3); see *Am. Fam. Mut. Ins. Co.*, 485 F.3d at 934). A court terminates the injunction when the trade secret ceases to exist (Wis. Stat. § 134.90(3)(a)(2); see *Minuteman*, 434 N.W.2d at 778-79 (holding that the possibility of reverse engineering was a factor in how long the injunctive relief should last)).

Reasonable Efforts to Maintain Secrecy

8. What efforts to maintain secrecy have been deemed reasonable or sufficient for trade secret protection by:

- Courts in your state?
- Statutes or regulations in your state?

Courts

Under Wisconsin law, information is not entitled to protection as a trade secret unless the owner has taken reasonable steps to protect the trade secret (Wis. Stat. § 134.90(1)(c)(2)). Courts determine the reasonableness of safeguarding measures on a case-by-case basis, considering:

- The size and nature of the business.
- The cost of additional measures.
- The degree to which the measures would decrease the risk of disclosure.

(*In re Innovative Constr. Sys., Inc.*, 793 F.2d 875, 884 (7th Cir. 1986) (applying Wisconsin law).)

Courts applying Wisconsin law have identified the following as reasonable measures to protect secrecy:

- Sharing information about a proprietary process with only a small number of employees (*Centrifugal Acquisition Corp. v. Moon*, 849 F. Supp. 2d 814, 832-33 (E.D. Wis. 2012); *La Calhene, Inc. v. Spolyar*, 938 F. Supp. 523, 530 (W.D. Wis. 1996)).
- Deliberately avoiding putting the formula into writing (*Centrifugal Acquisition Corp.*, 849 F. Supp. 2d at 832).
- Deliberately avoiding seeking a **patent** to prevent public disclosure and reverse engineering (*Centrifugal Acquisition Corp.*, 849 F. Supp. 2d at 832).
- Restricting visitor access to the facility, for example:
 - barring visits from outsiders (*Centrifugal Acquisition Corp.*, 849 F. Supp. 2d at 832); or
 - requiring escorts to accompany visitors (*La Calhene, Inc.*, 938 F. Supp. at 530).
- Using a password-protected computer system (*Centrifugal Acquisition Corp.*, 849 F. Supp. 2d at 833).
- Keeping the information in a safe or a locked cabinet (*Centrifugal Acquisition Corp.*, 849 F. Supp. 2d at 833; *B.C. Ziegler & Co. v. Ehren*, 414 N.W.2d 48, 52 (Wis. Ct. App. 1987)).
- Requiring employees to sign confidentiality agreements that plainly inform the employee that all of the employer's information is confidential (*ECT Int'l, Inc.*, 597 N.W.2d at 484).

A federal court interpreting Wisconsin law has ruled that merely restricting access to the facility and requiring passwords are not reasonable measures to protect the confidentiality of information, as "these are normal business practices in any business." Rather, the employer must use additional measures to protect confidentiality. (*MaxPower Corp. v. Abraham*, 557 F. Supp. 2d 955, 961 (W.D. Wis. 2008).)

An employer using confidentiality agreements to protect a trade secret must be cautious with the phrasing of the agreements. Setting a time limit on the period where the trade secret cannot be divulged may lead a court to conclude that confidentiality does not need to be maintained after that period (*ECT Int'l, Inc.*, 597 N.W.2d at 484-85).

The Seventh Circuit (interpreting Wisconsin law) has ruled that the failure to ask employees to sign confidential agreements is not fatal to a trade secret protection claim if there is an "implied undertaking to abide by the trade's norms of confidentiality" (*Hicklin Eng'g, L.C. v. Bartell*, 439 F.3d 346, 350 (7th Cir. 2006), abrogated on other grounds). There can be an implied obligation of confidentiality when:

- The employee knew or had reason to know that the disclosure was intended to be in confidence.
- The other party to the disclosure reasonably inferred that the person consented to an obligation of confidentiality.

(*Centrifugal Acquisition Corp.*, 849 F. Supp. 2d at 833.)

Courts have found the following factors relevant in determining that the information was not subject to reasonable efforts to protect secrecy:

- Lack of confidentiality agreements with employees (*MaxPower Corp.*, 557 F. Supp. 2d at 961).
- Failing to emphasize the importance of keeping the information confidential (*MaxPower Corp.*, 557 F. Supp. 2d at 961).
- Failing to retrieve the information from departing employees or to ensure that departing employees deleted allegedly confidential information from their laptops (*MaxPower Corp.*, 557 F. Supp. 2d at 961).
- Giving all employees access to the information (*MaxPower Corp.*, 557 F. Supp. 2d at 961).

Statutes or Regulations

While the Wisconsin Uniform Trade Secrets Act requires information to be the "subject of efforts to maintain its secrecy that are reasonable under the circumstances" to receive trade secret protection, it does not provide guidance or examples of reasonable efforts (*Wis. Stat. § 134.90(1)(c)(2)*).

Trade Secret Misappropriation Claims

9. For any law identified in [Question 1](#) (statutes or regulations) or [Question 3](#) (common law), what must a plaintiff show to prove trade secret misappropriation?

The Wisconsin Uniform Trade Secrets Act defines misappropriation in three different ways:

- Acquisition.
- Disclosure.
- Use.

(*Wis. Stat. § 134.90(2)*.)

Acquisition as Misuse

A trade secret can be misappropriated where the acquirer knew or had reason to know that the trade secret was acquired by improper means ([Wis. Stat. § 134.90\(2\)\(a\)](#)).

Disclosure or Use of Trade Secret as Misuse

Disclosure or use of another's trade secret without express or implied consent is misappropriation where the person either:

- Used improper means to acquire knowledge of the trade secret.
- At the time of disclosure or use, knew or had reason to know that their knowledge of the trade secret was:
 - derived from a person who used improper means to acquire it;
 - acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use;
 - derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or
 - acquired by accident or mistake.

([Wis. Stat. § 134.90\(2\)\(b\)](#).)

Definition of Improper Means

Improper means include:

- Theft.
- Espionage.
- Bribery.
- Misrepresentation.
- Breach of the duty to maintain secrecy.
- Inducement of a breach of the duty to maintain secrecy.

([Wis. Stat. § 134.90\(1\)\(a\)](#).)

Inferring the Use of Trade Secrets

The Seventh Circuit, interpreting Wisconsin law, has held that the use of trade secrets can be proven by inference (*3M*, 259 F.3d at 596).

10. Can corporations, corporate officers, and employees of a competing company in possession of the trade secrets of others be held liable for misappropriation in your state? If so, under what circumstances?

Under the Wisconsin Uniform Trade Secrets Act, any "person" can be held liable for misappropriation (*Wis. Stat. § 134.90(2)*). Wisconsin law broadly defines "person" to include all:

- **Partnerships.**
- Associations.
- Bodies politic or corporate.

(*Wis. Stat. § 990.01(26)*.)

Wisconsin courts have not directly addressed **vicarious liability** for subsequent employees. However, in Wisconsin, misappropriation of trade secrets is a tort, and tortious conduct may provide the basis for vicarious liability (see *World Wide Prosthetic Supply, Inc. v. Mikulsky*, 631 N.W.2d 253, 259 (Wis. Ct. App. 2001); *Kerl v. Dennis Rasmussen, Inc.*, 682 N.W.2d 328, 333-34 (Wis. 2004)).

Defenses

11. For any law identified in [Question 1](#) (statutes and regulations) or [Question 3](#) (common law), what defenses are available to defend against claims under the statute or common law?

Defenses to a trade secret misappropriation claim in Wisconsin include:

- The information is not a protectable trade secret (see [Question 4](#)).

- There were no reasonable efforts to maintain the secrecy of the information (see [Question 8](#)).
- The information is readily ascertainable by proper means (see [Question 4](#)).
- The information was not appropriated (see [Question 9](#)).
- The statute of limitations has expired (see [Question 12](#)).
- The plaintiff failed to describe the subject matter of the trade secret with sufficient particularity (see [Question 6: Not Trade Secrets](#)).
- Equitable defenses, including:
 - **estoppel**;
 - waiver;
 - unclean hands; and
 - laches.

Statute of Limitations

12. For any law identified in [Question 1](#) (statutes and regulations) or [Question 3](#) (common law), please identify the relevant statute of limitations for bringing a claim.

Wisconsin imposes a three-year statute of limitations for misappropriation of trade secrets ([Wis. Stat. § 893.51\(2\)](#)). This three-year period begins to run once the misappropriation is either:

- Discovered.
- Should have been discovered by the exercise of reasonable diligence.

A continuing misappropriation is a single claim ([Wis. Stat. § 893.51\(2\)](#)).

Mere suspicions and fears, or abstract concerns, do not constitute a "discovery" (*Sokol Crystal Prods., Inc. v. DSC Commc'ns Corp.*, 15 F.3d 1427, 1430 (7th Cir. 1994) (applying Wisconsin law)). Rather, the statute of limitations begins to run when the

plaintiff has sufficient information to make a "meaningfully colorable" claim that can survive a motion to dismiss for failure to state a claim (*Fail-Safe LLC v. A.O. Smith Corp.*, 744 F. Supp. 2d 831, 852 (E.D. Wis. 2010) (applying Wisconsin law)).

Other Related Claims

13. What other claims, statutory or common law, can a plaintiff bring in your state against a defendant in the event of wrongful acquisition, misuse, or disclosure of a trade secret?

In addition to a trade secret misappropriation claim under the Wisconsin Uniform Trade Secrets Act, a plaintiff can allege claims for:

- Contractual remedies, whether or not based on misappropriation of a trade secret.
- Other civil remedies not based on misappropriation of a trade secret.
- Criminal remedies, whether or not based on misappropriation of a trade secret.

(Wis. Stat. § 134.90(6)(b).)

For example, the following claims are available in Wisconsin:

- Breach of fiduciary **duty of loyalty**, where the employee is a "key employee" (*Burbank Grease Servs., LLC*, 717 N.W.2d at 796; see also *Genzyme Corp. v. Bishop*, 460 F. Supp. 2d 939, 941 (W.D. Wis. 2006)).
- Aiding and abetting a breach of fiduciary duty of loyalty (*Burbank Grease Servs., LLC*, 717 N.W.2d at 796).
- Conspiracy (*Genzyme Corp.*, 460 F. Supp. 2d at 941).
- Breach of contract (*Genzyme Corp.*, 460 F. Supp. 2d at 941).
- Unfair competition, if the claim is not duplicative of the trade secrets misappropriation claim (*3M*, 259 F.3d at 602).
- Tortious interference with a confidentiality agreement (*IDX Sys. Corp. v. Epic Sys. Corp.*, 285 F.3d 581, 586-87 (7th Cir. 2003)).

Remedies

14. For any law identified in [Question 1](#) (statutes and regulations) and [Question 3](#) (common law), please describe the potential relief available to plaintiffs.

Under the Wisconsin Uniform Trade Secrets Act, potential relief can include:

- **Monetary damages.** Except to the extent that a material and prejudicial change of position before acquiring knowledge or reason to know of misappropriation makes monetary recovery inequitable, the court may award damages for misappropriation ([Wis. Stat. § 134.90\(4\)\(a\)](#)). Monetary damages can include both:
 - actual loss; and
 - unjust enrichment.
- **A reasonable royalty.** The court may require a reasonable royalty for the misappropriator's unauthorized disclosure or use of a trade secret, if the complainant cannot prove, using any other method, an amount of damages that exceeds the reasonable royalty ([Wis. Stat. § 134.90\(4\)\(a\)\(3\)](#)).
- **Punitive damages.** The court may award punitive damages of no more than twice the amount of reasonable royalty or actual loss or unjust enrichment damages, if the misappropriation is willful and malicious ([Wis. Stat. § 134.90\(4\)\(b\)](#)).
- **Attorneys' fees.** The court may award reasonable attorneys' fees if the misappropriation is willful and deliberate ([Wis. Stat. § 134.90\(4\)\(c\)](#)).
- **Injunctive relief.** The court may grant an injunction against a person who misappropriates a trade secret ([Wis. Stat. § 134.90\(3\)](#)).
- **Affirmative acts.** Under appropriate circumstances, the court may order affirmative acts to protect a trade secret ([Wis. Stat. § 134.90\(3\)\(c\)](#)).

Contractual Protections

15. What factors do courts in your state consider when assessing the enforceability of a nondisclosure or confidentiality agreement?

Under Wisconsin law, nondisclosure agreements are subject to Wis. Stat. § 103.465 governing **restrictive covenants** (*Tatge v. Chambers & Owen, Inc.*, 579 N.W.2d 217, 222 (Wis. 1998); *Gary Van Zeeland Talent, Inc. v. Sandas*, 267 N.W.2d 242, 250 (Wis. 1978)).

Restrictive covenants require sufficient **consideration**. Accepting or continuing **at-will employment** is sufficient consideration (*Runzheimer Int'l, Ltd. v. Friedlen*, 862 N.W.2d 879, 885-91 (Wis. 2015)).

Restrictive covenants are lawful and enforceable if they are reasonably necessary for the employer's protection (Wis. Stat. § 103.465).

The reasonableness inquiry involves the totality of the circumstances (*Rollins Burdick Hunter of Wis., Inc. v. Hamilton*, 304 N.W.2d 752, 757 (Wis. 1981)). A restrictive covenant must meet the following five prerequisites to be enforceable:

- The employer must have a protectable interest in justifying the restriction imposed.
- The restriction must provide a reasonable time limit.
- The restriction must provide a reasonable territorial limit.
- The restriction must not be oppressive and harsh as to the employee.
- The restriction must not be contrary to public policy.

(*Star Direct, Inc., v. Dal Pra*, 767 N.W.2d 898, 905 (Wis. 2009).)

An employer has a protectable interest in justifying a restrictive covenant if the employee presents a substantial risk to either the employer's:

- Relationships with the employer's customers.
- Confidential business information.

(*Fields Found., Ltd. v. Christensen*, 309 N.W.2d 125, 129 (Wis. Ct. App. 1981).)

Other factors the court may consider in the reasonableness inquiry include:

- The nature and character of the information, including the extent to which it is vital to the employer's ability to conduct its business.
- The extent to which the employee actually had access to the information.
- The extent to which the information could be obtained through other sources.

(*Rollins Burdick Hunter*, 304 N.W.2d at 757.)

While Wisconsin requires restrictive covenants to specify reasonable time limits for restricting the disclosure of confidential information that does not rise to the level of trade secrets, however, trade secrets are protectable as long as they remain trade secrets. Therefore, covenants restricting the disclosure of trade secrets can be reasonable even without a specified time limit. (*Am. Fam. Mut. Ins. Co.*, 485 F.3d at 933-34). Employers that impose a specific time limit in restrictive covenants involving trade secrets risk losing trade secret protection for that information once the time limit expires.

Wisconsin courts can **blue pencil** nondisclosure or confidentiality agreements that are overly broad. Divisible portions of contracts can be separately enforced (*Star Direct Inc.*, 767 N.W.2d at 915-16).

For more information on non-compete agreements in Wisconsin, see [State Q&A: Non-Compete Laws: Wisconsin](#).

Miscellaneous

16. What common law duties are recognized in your state that prohibit employees from disclosing employer information even absent an independent contractual obligation?

Employees in Wisconsin may owe a duty of loyalty and **fiduciary duty** to the employer (*Burbank Grease Servs., LLC*, 717 N.W.2d at 796; *Chapes v. Pro-Pac, Inc.*, 473 B.R. 295, 302 (E.D. Wis. 2012); *Genzyme Corp.*, 460 F. Supp. 2d at 941). Disclosing confidential information is a breach of these duties. These claims do not require the claimant to prove that the confidential information was a trade secret (see, e.g., *Burbank Grease Servs., LLC*, 717 N.W.2d at 796).

17. Does your state recognize the doctrine of inevitable disclosure?

Wisconsin courts have not ruled on the viability of the **inevitable disclosure** doctrine under the state's trade secret laws.

18. What, if anything, have courts held regarding trade secret misappropriation claims involving memorizing trade secrets rather than the taking of tangible representations of information?

Wisconsin courts have not differentiated between misappropriation claims involving the memorization of trade secrets and misappropriation claims involving the taking of tangible representations of information. Mere memorization of trade secrets without use, disclosure, or dissemination may not be misappropriation (see, e.g., *Corp. Express Office Prods., Inc. v. Brown*, 2001 WL 34381111, at *7 (W.D. Wis. July 18, 2001)).

19. Do any of the laws identified in [Question 1](#) (statutes and regulations) or [Question 3](#) (common law) preempt other causes of action a plaintiff could assert related to trade secret misappropriation (for example, conversion, breach of fiduciary duty, unfair competition, or tortious interference)?

The Wisconsin Uniform Trade Secrets Act (WUTSA) displaces conflicting:

- Tort law.
- Restitutionary law.
- Any other Wisconsin laws providing a civil remedy for misappropriation of a trade secret.

(Wis. Stat. § 134.90(6)(a).)

However, the WUTSA does not preempt the following remedies:

- Contractual remedies, whether or not based on misappropriation of a trade secret.
- Criminal remedies, whether or not based on misappropriation of a trade secret.
- Civil remedies that are not based on misappropriation of a trade secret.

(Wis. Stat. § 134.90(6)(b).)

For more information on causes of action that the WUTSA does not preempt, see [Question 13](#).