

Confidentiality Agreements, Non-Disclosure Agreements and Social Media Policies Used To Protect Company Secrets

Corporate meeting planners and companies of all sizes are trying extremely hard to protect their privacy rights and taking unique security measures at meetings and conferences these days using certain contract-based mechanisms. They include having individuals sign Confidentiality Agreements (CAs) and Non-Disclosure Agreements (NDAs). These are essentially the same for all intents and purposes and for this note. Either one may have the same provisions of the other. A main difference to note here is that Confidentiality Agreements are generally one-sided, protecting only a company's interests and are often forced upon an employee with an acknowledgment form having received the Confidentiality Agreement and the employee handbook at the inception of the employer-employee relationship. They are not limited to an employer-employee relationship however, as they are often used in consulting arrangements as well.

Non-Disclosure Agreements, on the other hand, may offer protection to both parties and are often used at the inception of a transaction when companies or individuals are exchanging information and determining whether they want to proceed with a deal with the other party.

A couple facts about NDAs - They can be mutual or one-sided. Besides the purpose described above, they may be used by a company host to require a guest at an event, gathering or meeting to promise and represent, among other things, that the individual will not disclose whatever it is the company host does not want disclosed – examples might include attendees' names, the subject matter of meeting, discussions had, location of gathering, speeches made and by whom, or even the existence of the gathering itself. They can go on further to say that none of the disclosures can be made in any form or medium and name a "non-exhaustive" and "non-exclusive" list including e-mail, blogs, photos, Twitter, LinkedIn, Face Book, etc.

The Non-Disclosure Agreement can also be a mutual Non-Disclosure Agreement, which would protect both the company asking the individual to sign it as well as the individual. This would benefit certain high profile people in their working relationships or appearances. For example, a large famous financial institution hiring an executive as a consultant who previously worked at a competing institution – neither party may want the existence of that relationship public. So long as the agreement is not illegal or contrary to public policy, the agreement can be tailored to address whatever the mutual concerns are of the parties.

If the companies are concerned with employees (as opposed to simply attendees at an event) disclosing information, ideally they would have the employee (or even independent contractor, who would sign an independent contractor agreement containing a confidentiality provision or a stand-alone confidentiality agreement) sign an agreement at the inception of the relationship which would include confidentiality provisions, non-competes (narrowly tailored in terms of scope of restricted services, geographic location and duration), non-solicitation of clients and contacts met while working with the company. This all-inclusive agreement would include a social media policy (or provision) that addresses situations and scenarios not just in the "apparent" workplace, but at these gatherings described above, whether on the company premises or at a bar, party, event hall, award ceremony, whatever. For example, the new popular show "Running Russell Simmons" comes to mind, wonderful show and inspiring host. Russell Simmons, interns and other employees are constantly thrust into situations that expose them to a variety of famous and high-profile individuals and companies. Many of those parties on the show may (and probably do) want to protect themselves with the agreements I am describing. Again, they can cover whatever the parties want to include, so long as the subject matter is of a legal nature.

As far as enforcement goes, I have recently been receiving calls regularly from both companies trying to enforce these agreements as well as individuals who are being threatened by companies trying to enforce them.

How enforceable they are depends on how the agreements were initially drafted and in what jurisdiction they are trying to be enforced. There is very little case law out there on the enforceability of stand-alone social media policies as they relate to employees. However, although ever-changing in this technological explosion of social media, there is more established case law out there addressing Confidentiality Agreements and Non-Disclosure Agreements which is why it is recommended by this author to bootstrap these policies together at the beginning of any working relationship in any form where protection from disclosure of sensitive information is needed (either at an event or during the course of an employment relationship including consultant, independent contractor, employee or otherwise).

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