

Who are these People? New Generation Employees and Trade Secrets

Abstract

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Traditional approaches to examining the efficacy of trade secret protection in the workplace are often focused on technological and process based measures. Indeed, much attention has focused on the use of technology, by itself, to stem trade secret misappropriation. This Article offers a novel approach to the problem by incorporating contextual factors that might be important to trade secret protection and focuses on the people. It also, for the first time, applies sociological theories about employee theft to trade secret misappropriation.

Working from the outside in, the Article examines first the reported societal effects on the values of those workers who make up the largest segment of today's workplace. Namely, the characteristics of those labeled Generation X and Generation Y (collectively referred to in the Article as "New Generation Employees.") Unlike the Baby Boomers these New Generation Employees, for instance, are likely to change jobs quickly, protect and prioritize their self-interests, expect immediate gratification and rewards from employers, start their own companies, and use technology with great ease.

The Article then discusses how the attitudes and behaviors of these New Generation Employees map closely to the circumstances that are often present in trade secret misappropriation cases. This suggests a possible upward trend in trade secret misappropriation as New Generation Employees outnumber others in the workforce. Moreover, the attitudes and behaviors of this group are integrated with sociological theories of employee theft in a framework that (a) offers some explanations about what motivates employees to misappropriate trade secrets and (b) offers corresponding general preventive measures to protect trade secrets in the workplace.

Finally, the Article considers more broadly the importance and usefulness of studying attitudes, behaviors, and cultural influences in intellectual property. Changes in attitude about intellectual property in general might have implications for innovation, protection, compliance, and enforcement norms in the United States. The Article also posits that this kind of analysis which combines social science with intellectual property law might also be of some benefit to the frustrations United States companies experience in dealing with the foreign enforcement of their intellectual property rights.