

Legal Protection of Business Secrets From the Perspective of Human Resource Management

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ABSTRACT

Along with the continuous improvement and upgrading of the market economy and the accelerated formation of the pattern of economic globalization, against the background of unprecedented changes in a century, "business secret" has become an invincible magic weapon for enterprises to develop continuously in fierce competition. With the deepening of enterprise trade and the increasing theoretical achievements on business secrets, many problems and contradictions related to business secrets have also been exposed, which is particularly prominent in the practice of human resource management. Taking the case of A Company suing A for infringement of business secrets as an example, this study explores the existing problems and loopholes in business secrets from the perspective of optimization of human resources management. And solutions are put forward to effectively safeguard the interests of enterprises through judicial means and management system.

Keywords: Business secret, Legal protection, Human resources management.

1. INTRODUCTION

People's utilization of existing resources is accelerated in the context of the rapid development of economy and society and the progress and innovation of productivity, as the importance of information resources is becoming increasingly prominent. In such an era of information explosion, the importance of business secret as an information resource is particularly highlighted. Business secrets arise from the commercial activities, continue to accumulate in practice and achieve theoretical updates. With the deepening of theory and the complexity of business activities in the real world, people have to face the challenge of business secret protection while enjoying the dividend of business information. In today's business environment, people who have information and can protect it well can grasp the market trend, seize market share, and then obtain market position and huge benefits. Some enterprises have started fierce competition for business secret information in order to compete for market benefits, and some even use improper means to touch the red line of the law to obtain business information. These behaviors have greatly damaged the legitimate interests of other enterprises and damaged the good market economic

order. From the domestic and international environment, the protection of business secrets is not optimistic. The "Prism" in the United States in 2013, as a fuse, showed the tip of the iceberg of the dark competition for business secrets, triggered the exposure of a series of information theft scandals, and exposed the serious lack of business secret protection mechanism in the international environment. China has gradually transformed its market economy since the reform and opening up, and it has only been more than 40 years. Both enterprises and the government are still in the state of exploring and learning about business secrets. The theoretical understanding of business information is not comprehensive enough. There are also some loopholes in the mechanism system of business secret protection by the human resources department.

The development of socialist market economy and the opening of new journey of socialist modernization need a business environment of free competition, free flow and good order. Good development is inseparable from benign competition. However, the lack of a sound competition mechanism will inevitably affect the development of the socialist economy, and even hinder the healthy development of the socialist

market. In addition to the lack of business secret mechanism, there are many complex practice problems of enterprises, many of which are concentrated in the sector of human resource management. Now, it is an era of fierce competition for high-quality talent resources. With the rapid circulation of talents, there will inevitably be disputes about the protection of business secrets and turnover of employees. The contradiction between business secrets of enterprises and core resources of employees is naturally irreconcilable. Therefore, how to protect the interests of enterprises while respecting employees' independent employment choice legally and reasonably has become an important work in human resource management.

2. THEORIES RELATED TO BUSINESS SECRETS FROM THE PERSPECTIVE OF HUMAN RESOURCES

2.1 Business Secrets

In the era of market economy, the concept of business secret refers to unique business theory related to the core business information secret formed by enterprises in the process of competition. Business secrets involve the capital information, technical data and intellectual property achievements of enterprises in the process of operation, which are the centralized display of original intellectual achievements in enterprise operation and relate to the core competitiveness of enterprises in the fierce market competition and continuous development. Business secrets include business objectives and business capital. If business secrets are leaked or used by others by improper means, it will inevitably bring losses to the enterprise, and then affect the competitive advantage and position of the enterprise in the industry, as well as the strategic planning and long-term development of the whole enterprise in the future.[1]

2.2 Non-competition System

To protect business secrets in the flow of talents, the main system established in China is the non-competition system. Relevant provisions have been made in "Labor Contract Law of the People's Republic of China". First of all, Article 24 of "Labor Contract Law of the People's Republic of China" stipulates that "restrictions on employment are limited to senior management, senior technical

personnel and other personnel with confidentiality obligations of the employer. The scope, area and duration of the restriction shall be agreed between the employer and the worker and shall not violate the laws and regulations. After the termination of the labor contract, the period of non-competition of the personnel specified in the preceding paragraph to other employing units that produce or operate similar products or engage in similar businesses with their own units, or to produce or operate similar products or engage in similar businesses by themselves, shall not exceed two years."¹ The enterprise has not signed a non-competition agreement with all personnel. The signing of non-competition agreement requires corresponding conditions. Only qualified personnel of the enterprise can sign a non-competition agreement with the enterprise, and the non-competition period is not permanent, but has a corresponding period of time, which is less than two years. Second, when a worker signs a non-competition agreement with the employer, provisions should be made on the amount of compensation that should be paid for the worker's failure to fulfill the confidentiality obligation. The amount of compensation shall be determined by both parties through consultation, and the amount of liquidated damages shall be clear and reasonable. Third, the non-competition agreement is subordinate. A non-competition agreement shall be signed only after the employer and the person subject to enforcement have signed an employment contract and confirmed the employment relationship. From this point of view, the non-competition agreement is subordinate, but on the other hand, the non-competition agreement is not subordinate. For example, a non-competition agreement signed by both parties will not terminate with the termination of the employment contract. Therefore, in this regard, the non-competition agreement is not subordinate to the labor contract, nor does it have complete subordination. Finally, it has become a common phenomenon that the flow of talents leads to the leakage of business secrets of original enterprises. As a preventive system, non-competition system can not only protect business secrets, but also effectively protect the legitimate rights and interests of employers. At the same time, banning competition not only helps to protect social interests, but also reasonably restricts the disorderly flow of talents. Among the measures to protect business secrets, the signing of non-competition agreement is particularly important. The signing of

1. Article 24 of "Labor Law of the People's Republic of China".

this agreement not only helps to prevent the interests of both parties from being damaged, but also helps to prevent commercial disputes or conflicts of interest between both parties. Besides, the non-competition agreement has obvious effectiveness and powerful function. Considering the scope of business secrets, there are many cases of infringement of business secrets, most of which are complex. Non-competition agreements can be used as evidence to better handle such cases.[3]

3. RELEVANT PROBLEMS EXISTING IN THE HUMAN RESOURCES DEPARTMENT OF ENTERPRISES

3.1 Inadequate Confidentiality Agreements

According to the relevant dispute cases, the key of some companies that have won the lawsuit is that they have been paying attention to the protection of business secrets from the early stage. In practice, many companies still do not pay enough attention to the confidentiality agreement, which is also an important reason for the dispute. Besides, human resources departments of many companies do not pay attention to the confidentiality agreement, resulting in the leakage of business secrets with the departure of core employees. Confidentiality agreement plays a vital role in the interests of the enterprise. Starting from the interests of the enterprise, members of human resources management department of enterprises should first clarify the boundary of business secrets, and then express the demarcation with relevant agreements, so as to clarify the scope of business secrets involved in the work of employees and better set up prevention mechanism and management mechanism. Only on the basis that managers are familiar with the theoretical knowledge of business secrets can we ensure that the business secrets of enterprises will not be leaked due to negligence.

3.2 Lack of Legal Construction in Human Resources Department

In today's society, the best constraint on business behavior is to abide by a set of effective laws. As mentioned above, China has many laws to protect business behavior and specific business secrets. If there are no professional employees who know the relevant laws, it is difficult to find the legal loopholes of enterprise behavior in daily work, and it is impossible to make a rapid response and

take corresponding actions at the first time when the enterprise's business secrets are damaged.[4] In order to protect the interests of the enterprise from illegal acts and prevent the leakage of business secrets through improper procedures, the human resources department of the enterprise should pay attention to the investment and construction of legal work, sort out the existing legal work, and divide the corresponding legal sections according to the existing problems of the enterprise. By sorting out modules with loopholes in the actual situation of the human resources department, it is suggested to recruit corresponding professional staff according to the strategic plan of the enterprise. In addition, it is necessary to reform the working mechanism of the human resources department, so that the reformed working mechanism can be targeted to different legal dispute modules, respond quickly when there is a crisis and dispute again, quickly formulate response plans and take actions from the perspective of enterprise protection, so as to give full play to the role of the legal department in legal dispute resolution. In the daily staff training, it is suggested to pay special attention to the cultivation of the professional quality of professional legal staff, and timely follow up the knowledge supplement of the staff according to the continuous changes of national laws and policies, so as to cope with the ever-changing legal environment, actively encourage the staff to participate in work-related training and further study, and enrich the knowledge reserve to improve their professional skills. Those who pay attention to legal work should also have the holistic view. Starting from the overall strategic arrangement of the company, the adjustment of the working mechanism of the human resources management department should adapt to the work rhythm of other departments, ensure the smooth connection between the human resources management department and other working departments, and coordinate the cooperation and linkage with other departments, so that the legal department can better cooperate with the work of other departments.

3.3 Lack of Early Warning Mechanism

Nowadays, the loss of a core employee not only represents the loss of the corresponding labor ability, but also the loss of business value and virtualized information behind the employee. The reason why Company A caused relevant disputes reflects that the human resources department did not prevent in advance. To this end, the human resources management department of enterprises

should strengthen the management of on-the-job core employees and establish an effective early warning mechanism. Specifically, for an enterprise, the first thing is to establish a set of effective rules and regulations for core employees, restrict employees' behavior with explicit provisions, and pay attention to employees' trends, care about employees' physical and mental health and ensure employees' work enthusiasm.[5] Secondly, business secrets contain a lot of technical information. Therefore, starting from technical employees, it is required to strengthen the management of technical personnel and implement special salary policies for core technical personnel.

3.4 Lack of Non-competition System

In reality, the value of talents plays an increasingly prominent role in business competition. In the process of talent flow, there are a large number of disputes over the disclosure of business secrets. In view of such problems, enterprises, especially human resources management departments, should take corresponding countermeasures. In the face of talent flow, especially the resignation of core employees, many enterprises will adopt non-competition agreement to restrict employees to achieve the purpose of protecting business secrets. At the beginning of the formulation of non-competition, it is aimed at the senior managers of the enterprise or the core employees who master the technical information with great commercial value. As long as both parties reach an agreement, the period of time for these employees after resignation is two years according to the current law. During the period, the resigned employees shall not engage in work related to their own work. If they violate the agreement, employees and companies who accept these new employees face the risk of compensation for liquidated damages.

3.5 Business Secret Management in Foreign Exchange

In business exchanges, there are bound to be a lot of contacts. Many enterprises often organize learning and exchanges between enterprises, but it is easy to involve some information about business secrets in the process of communication, resulting in the risk of leakage of business secrets. In addition, the protection of business secrets is not only limited to the internal management, and it is necessary to pay attention to the communication among enterprises. In practice, many enterprises

will sign a confidentiality agreement and determine the content of the confidentiality agreement with the cooperative enterprise before negotiation and exchange.[2] Even if it is a short-term exchange between enterprises, enterprises cannot relax their precautions against the enterprises they communicate with. The purpose for exchange and cooperation between enterprises is to obtain valuable information. As long as it is information exchange, there is the possibility of leakage of business secrets. To sum up, it is very important for enterprises to sign confidentiality agreements in the process of communication. The signing of confidentiality agreement does not affect the cooperation between enterprises, and can effectively ensure that the business secrets of both parties will not be lost in the process of communication. Also in the process of sales negotiation, there is the risk of business secret disclosure. Therefore, the human resources department of the enterprise should strengthen the vocational training for the employees of the marketing department and the sales department, and improve the confidentiality awareness of the employees. Besides, relevant employees should be cautious in the process of determining the cooperative relationship with customers, always be aware of the leakage of business secrets, and avoid disclosing business secrets in the process of selling products. Finally, enterprises should also pay attention to the protection of business secrets when participating in large-scale conferences or business activities. All materials involving business secrets should be specially processed and cannot be discarded at will. In the exchange of activities, it is necessary to pay attention to not involve the information on business secrets, so as to better protect the business secrets of enterprises.[6]

4. SUGGESTIONS ON LEGAL PROTECTION OF BUSINESS SECRETS FOR HUMAN RESOURCE MANAGEMENT

4.1 Reasonable Use of Confidentiality Agreement

In business practice, in addition to employee turnover and illegal theft by other enterprises, the disclosure of business secrets may occur in the process of normal transactions and the establishment of cooperative relations with cooperative enterprises. The core secrets of products are inevitably involved in product

transactions, which may be reflected in the contracts of both parties. In order to deal with this situation, the enterprise can set up special terms in the contract to protect business secrets, and indicate the obligations of both parties to protect each other's business secrets and the corresponding punishment measures in case of violation. In view of the fact that the contract in the civil law has not come into force, the contract can specify the corresponding dispute resolution provisions if the contract is not established due to the problem of business secret leakage. Even if the cooperative relationship is not established, there can be a certain guarantee for the interests of the enterprise.

4.2 Establishment of a Special Legal Team

As mentioned above, in order to protect business secrets of enterprises, it is necessary to have a certain understanding of the professional knowledge of business secrets. This is a professional work, which requires targeted learning and application by a special team. When allocating human resource management, a visionary enterprise can set up a working group for the protection of business secrets, arrange employees with certain relevant knowledge among the group members to correspond to different work sections, and allocate professionals to be responsible for them. The work of business secret team should not only improve the internal leakage prevention and early warning mechanism of business secret according to the specific business situation of the enterprise, take into account the protection of business secrets in all links of entry, work and resignation, and make corresponding measures, but also constantly pay attention to the situation of other competitors in the industry and whether there is information utilization that may infringe on the enterprise, and be aware of these enterprises using improper means to steal or use business secrets. Taking both internal and external into account can better protect the interests of enterprises.[7]

4.3 Establishment of Prevention Mechanism

For technicians in key positions, the human resources department can also establish a confidentiality allowance system to encourage employees to keep secrets and restrict their personal behavior by paying confidentiality allowance to key technicians. With the establishment of this system, enterprises can enhance the cohesion and centripetal force of technical talents. For key

positions related to the interests of the enterprise, technical talents are very important. The resignation of technical personnel means the loss of key technical achievements. When the enterprise loses the support of technical information, it will also cause the growth of competitive advantage of rival enterprises, and a series of subsequent losses are unimaginable. Therefore, in order to keep talents, confidentiality allowance can be granted to these technical talents. As long as the technical talents do not leave and the technology does not lose, there is no need to return the confidentiality allowance to the enterprise, and technical talents can also enjoy the corresponding welfare policies, so as to reduce the loss caused by the loss of business secrets. In the early warning mechanism, the cultural atmosphere is also an indispensable part. Enterprises are willing to integrate the knowledge of protecting business secrets into their daily work, especially the ideological publicity of those employees involved in core secrets, so as to improve the corresponding bottom line of credit value, strengthen the ideological and moral level of employees, and enable employees to achieve self-restraint at the level of inner value. To improve the moral quality of employees, enterprises usually adopt the employee training. However, to improve the inner identity of employees, it is suggested to fundamentally pay attention to the corporate culture. Enterprises can improve the value level and moral cultivation of employees from a deeper level, and pay attention to the cultivation of corporate culture in business secrets, which is of far-reaching significance to enterprises. In the corporate culture, the humanistic care of the enterprise is a key part. The human resources department should pay attention to the management of employees' emotions, pay attention to the negative emotions of core employees, and carry out work to eliminate them as soon as possible. If the negative emotions of employees are ignored, it will lead to the continuous accumulation of employees' negative emotions, which is bound to result in the loss of both employees and the enterprise. Enterprises should actively maintain communication with core employees, strive to master the emotional state of employees, and avoid employees leaving for emotional reasons.

4.4 Establishment of Non-competition System

From the perspective of enterprises, the signing of non-competition agreement should become the due consciousness of employees in human

resources management department. The signing of non-competition agreement should run through the whole process of employees from entry to resignation. In order to reasonably apply the non-competition system in the practice of human resources management, employees of the human resources department are required to be familiar with the relevant laws and regulations. For example, during the signing process, they should pay attention to the details of the contract terms, clarify business secret information and behaviors that are not allowed to be taken by employees after leaving, and pay attention to the signing period to avoid subsequent disputes caused by time node. The purpose of establishing the non-competition system is to protect business secrets and the legitimate rights and interests of enterprises. If more disputes and problems are caused by the non-standard agreement signed by the employees of the human resources management department, it deviates from the original intention of the system.

5. CONCLUSION

In today's era, the business environment and current situation of enterprises are directly related to the national economic development pattern and speed. With the development of the times, the continuous emergence of high and new technologies and the continuous complexity of the actual situation, the protection of trade secrets has been pushed to an unprecedented height. Only by establishing the awareness of business secret protection and taking measures to protect business secrets can we ensure that the interests of enterprises are not damaged and the sound development of economy is guaranteed.

The most effective and safest way to protect business secrets is to follow relevant laws. Although the relevant legal system of business secret protection in China is not perfect, enterprises should also start from the current laws, learn relevant laws and be good at using legal weapons to protect the legitimate rights and interests.

AUTHORS' CONTRIBUTIONS

Yuwei Wang is responsible for paper writing, Zhaobin Pei reviewed the paper, and Jing Qu contributed to editing.

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