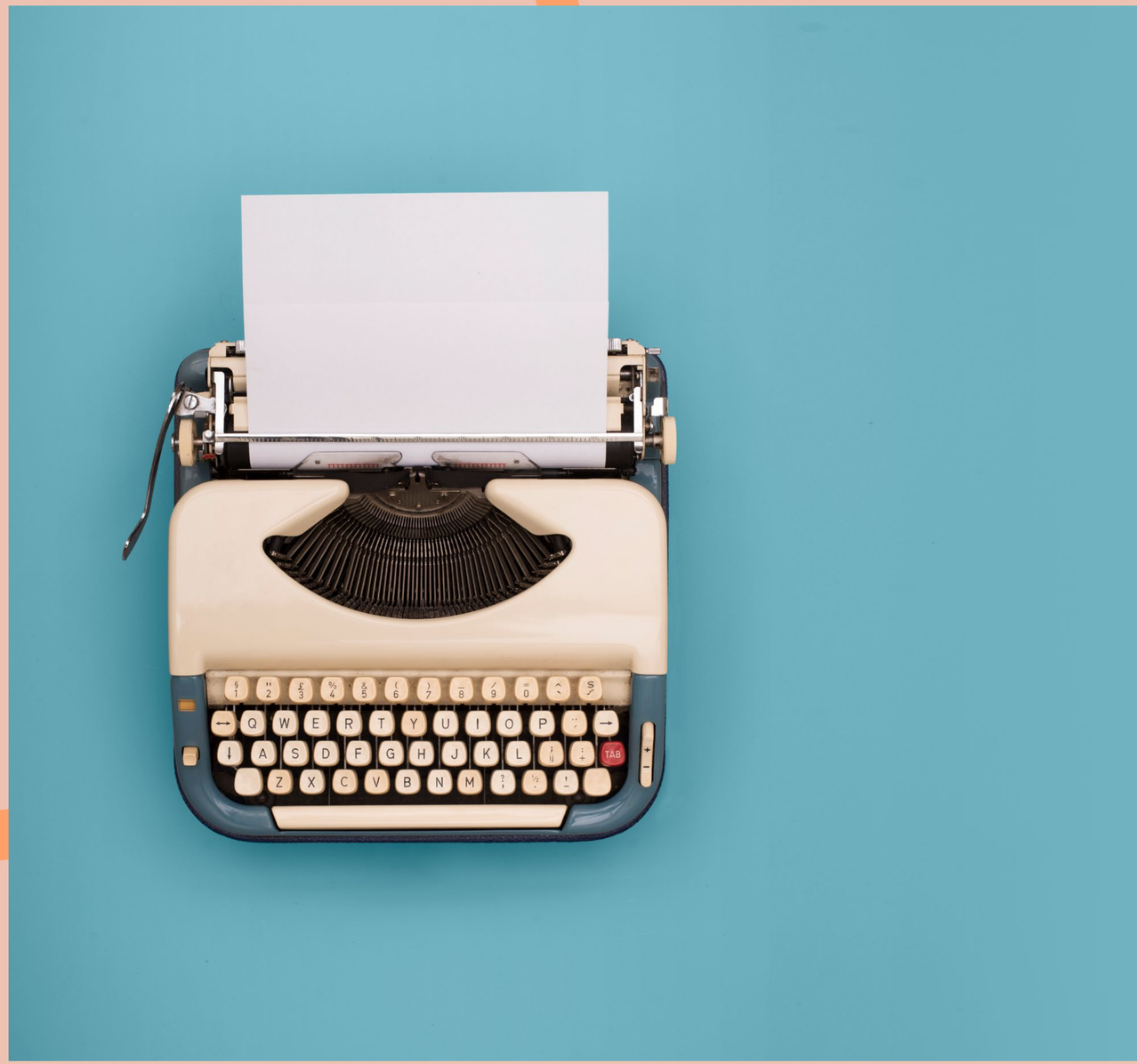
Bird & Bird

Trade Secrets Top Tips

Protect your trade secrets and other IP in a global workplace throughout the employment lifecycle



At the start of and during employment

Clear policies and contractual terms

- Check template employment contracts, employee handbooks and company policies:
  - contain **clear wording** to protect your confidential information, trade secrets, and other IP;
  - are kept **up to date** with changes in the law in all countries where your business operates; and
  - reflect the global workplace of remote and hybrid work.
- **Review** whether separate NDAs need to be signed by any employees working in senior or sensitive roles or handling highly confidential information.
- Ensure any post-termination restrictions (eg non-compete, non-solicitation) in the employment contract are **tailored, well-targeted and properly informed** by the actual needs of the business and the specific role of an employee.

Identify and audit valuable trade secrets and other IP

- Conduct a **regular audit** of your confidential information, trade secrets and other IP and identify:
  - what are your confidential materials and trade secrets?
  - where are they held?
  - who has access to them?
  - what IP does the business actually own and use?

Labelling

- Clearly **label** such information with confidentiality warnings and/or with copyright notices and make it clear that they are not for external disclosure.
- **Record** who has control and access to this information and who owns/develops IP within the business – records of drafts and historic documents can be useful to demonstrate ownership of IP.

Restrict access

- Use physical or digital restrictions, sign off requirements and download limitations to **restrict access** to trade secrets and other IP.
- Consider **limiting access** to a “need to know” basis.

Educate employees

- Deliver regular (eg annual) IT/compliance and/or trade secrets awareness training to **educate and remind** employees about:
  - the importance of protecting trade secrets and other IP, and how their actions might impact that protection;
  - data security and the difference between personal and corporate devices; and
  - their contractual obligations to protect confidential information and other IP.

Develop a strategy

- Establish a clear **business disaster response plan and strategy** to act quickly if information is taken.
- Consider **monitoring** employees’ IT use to help identify potential breaches or issues quickly (eg large volumes of printing, big downloads or many emails to personal accounts).

At the end of employment

Implement offboarding procedures

- Establish and **implement structured and clear offboarding procedures** for outgoing employees. This may include:
  - **written reminders** to staff about their non-disclosure obligations and contractual duties in relation to confidential information, trade secrets and other IP;
  - the **immediate return and/or deletion** of company information, property and IP, including (if required) the assignment in writing of IP;
  - **trade secrets awareness training** as part of an exit interview;
  - utilising **garden leave** to restrict employee activities during their notice period and/or **deferred compensation payments** (if relevant); and
  - where appropriate, **notifying the new employer** of the employee's contractual obligations and restrictions of the business and the specific role of an employee.

Act quickly if there is a potential threat

- Assess and minimise the impact internally (on staff) and externally (on clients, customers and suppliers);
- Reinforce existing business relationships;
- Identify, collect and secure evidence (eg computer and/or phone records) engaging specialist computer forensic experts if appropriate;
- Investigate possible employee misconduct and consider suspension and/or disciplinary action (if applicable);
- Work out what evidence there is of any wrongdoing and where it might be; and
- Assemble the appropriate team of advisors to tackle the threat.

Organise

- Organise an internal management team, involve legal and if necessary, notify insurance providers.

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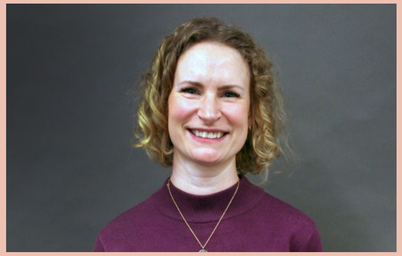

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