

Paul Chan Comments on Criminal Trade Secrets Law and Non-Competition Agreements

Principal [Paul Chan](#) was quoted in the Daily Journal article, “Criminal Trade Secrets Laws Can Help Employers,” describing the interplay between California law – which limits restrictive covenants sometimes used by employers to protect trade secrets – and federal criminal trade secrets laws.

Business and Professions Code Section 16600 reflects California’s longstanding public policy in favor of employee mobility, stating that “every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void.” As a result of this policy, it has become increasingly difficult for employers to protect trade secrets and intellectual property once an employee departs the company. Industrial espionage, often spearheaded by Chinese intelligence agents, is an increasing concern within the United States. The federal Economic Espionage Act and Trade Secrets Act have become essential tools used to prosecute trade secrets theft, notwithstanding public policies that favor employee mobility.

“There is a growing trend in using the Economic Espionage Act, which couples criminal charges with what would normally be civil trade secret litigation,” Chan said. “Part of the recent spike is a recent federal enforcement focus on prosecuting intellectual property violations involving Chinese actors. In simple terms, [the Act] criminalizes trade secret theft when interstate commerce is involved, and there are enhanced penalties when it involves a foreign national.”

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