

Two Minute Training

Best Practices for NDAs

Non-Disclosure Agreements are easy to sign, but even easier to violate. Here are some ways you can help to protect your company from liabilities that arise from inadvertent disclosure.

MAKE IT AVAILABLE

Ensure that everyone in contact with client data has access to the NDA and knows its terms.

ASSUME ITS CONFIDENTIAL

When in doubt, assume that any information about a client or business partner is proprietary and not to be shared.

CONSIDER THIRD PARTIES

The company signing the NDA is liable for disclosures made by subcontractors, vendors and other partners. Information shared with contractors and partners should only be on a need-to-know basis, and written confidentiality provisions should be part of all contracts with your own employees as well as third parties.



Avoiding Liability: Nondisclosure Agreements (NDAs)

Keeping Your Client's Confidence

A Non-Disclosure Agreement (NDA) is typically signed by both parties while the parties are exploring their initial business relationship. In the IT services context, because the potential client is often required to disclose sensitive proprietary information, it is customary to execute an NDA to protect the confidentiality of any information disclosed. Your business development team is anxious to move forward to discussions about the client's needs. Executing an NDA assures the client that their information will not be shared or used except for evaluating those needs.

The main issue arises after the client actually engages the company. Often, the business development and sales teams that executed the NDA have handed off day-to-day responsibility to the project manager and the team implementing the solution. The terms of the NDA, and the specific information which the client has identified as confidential, are unknown to the development team. Inadvertently, information that the client considers confidential is disclosed outside the company. A claim is made for breach of the NDA.

Of course, even absent an NDA, it is best to always keep any client-specific information confidential and to avoid unauthorized use or disclosure. And while clients tend to overstate what information is proprietary – when it is often the case that the data is already in the public domain – trying to determine what is and what is not a client's trade secret is an expensive proposition that may only get sorted out in a courtroom.

Whenever an NDA is signed on behalf of the company, it should be readily available to anyone who wishes to consult the document. NDAs themselves are not proprietary; instead, every person in the company is presumed to know the terms of the agreement. Independent contractors are also a source of potential liability. Most NDAs hold the company signing the agreement liable not only for disclosures made by their employees, but also for disclosures made by contractors, vendors or partners working on behalf of the company.

As with any legal document, if you have questions, it's best to get clarification up front.

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