2025 Year in Review: Trade Secrets, Computer Fraud & Non-Competes

A comprehensive look at the year's key cases, legislation, and enforcement trends

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2 | Restrictive Covenant New State Legislation, Key Judicial Decisions, and Legislation to Watch

3 | Computer Fraud Update

4 | Notable Trade Secrets Cases

5 | Practical Solutions, Tips, and Best Practices in Changing Technology Landscape

Post-FTC Effort for Federal Ban on Restrictive Covenants – Now What?

Status of Federal Actions Against Restrictive Covenants

- **FTC retreats from nationwide non-compete ban**
  - Voluntary dismissal of three lawsuits (*ATS Tree Services; R. Ryan; The Villages of Florida*)
  - Not a total walkaway; still gathering/seeking public input to shape future enforcement
- **New FTC–DOJ Task Force (Feb. 26, 2025)**
  - Targets anti-competitive labor practices: non-compete, no-poach, no-solicitation, no-hire agreements
- **Shift to individual enforcement actions**
  - Growing case-by-case scrutiny—what counts as "unfair" is widening; commissioners say to expect "steady stream of enforcement actions" in 2026
- **Healthcare under the microscope (Sept. 10, 2025)**
  - FTC warns employers it will investigate unjustified or overbroad non-competes in the sector

Status of FTC Enforcement Actions

- **October 2025:** finalized consent decree in $35 billion merger between Synopsys and Ansys, requiring removal of non-competes and restrictions on non-solicits as part of acquisition deal

- **November 2025, only <u>two</u> commissioners at FTC**
  - Chair Andrew Ferguson and Commissioner Mark Meador; TBD whether other appointees will be forthcoming for full five allowed

- **November 2025 – FTC finalized consent decree with Gateway Services** (national pet cremation company) on use of non-competes for nearly *all of its* 1800 employees (execs and hourly employees)

- **December 2025 – FTC sued and issued proposed consent decree with building services contractor companies**
  - Adamas Amenity Services LLC and related companies sued for using **no-hire agreements** to "restrict building owners and management companies across New Jersey and New York City from directly hiring workers employed by Adamas without a significant penalty"

Other "National" Implications of Restrictive Covenants

- NIL = athletes monetizing their "Name, Image & Likeness" (endorsements, social media, appearances)

- **Duke University** initiates lawsuit over $4 million NIL deal with star QB

    - Contract gave Duke exclusive NIL rights and restricted transfer through 2026
    - Highlights tension between NIL IP protections and transfer freedom for amateur athletes (implication of non-compete restrictions)
    - NC court issued a temporary order blocking the transfer while litigation proceeds

- On January 27, Duke and QB settled that cleared way for QB to transfer to Miami in advance of scheduled Preliminary Injunction Hearing

Practice Notes and Strategies For 2026 - Federal

1. Federal agency rulemaking on non-competes less likely in 2026; individual enforcement actions for egregious covenants more likely.
2. Federal agencies (FTC, NLRB, etc.) still have authority to attack individual restrictive covenants.
3. Keep an eye on Congress, where nationwide restrictive covenant legislation is less susceptible to court challenge.
4. States continue to introduce legislation to police use of restrictive covenants.

New State Legislation
& Key Judicial
Decisions

2

States Where Non-Competes Remain Unenforceable

- CALIFORNIA
- MINNESOTA
- NORTH DAKOTA
- OKLAHOMA

- Changes and adjustments to income thresholds for application of non-competes and non-solicit agreements
- Limitations on class of workers (e.g. health care providers or physicians) subject to restrictive covenants
- Tightening restrictions to ensure covenants are tied to protectable interests (e.g., trade secrets)
- Prohibitions on enforcement of foreign state laws to residents who do not work or reside in the foreign state
- Strict notice requirements

Income Threshold Updates

- **Colorado**
  - – Non-compete threshold increasing to $130,014
  - – Customer non-solicit threshold increasing to $78,008.40
- **Maine**
  - – Non-compete threshold increasing to $63,840
- **Oregon**
  - – Non-compete threshold increasing to $119,541
- **Rhode Island**
  - – Non-compete threshold increasing to $39,900

Income Threshold Updates (cont'd)

- **Virginia**
  - Non-compete threshold increasing to $78,364.52
- **Washington**
  - Threshold for non-competes, no-service agreements increasing to $126,858.83 ($317,147.09 for independent contractors)
- **Washington, D.C.**
  - Non-compete threshold increasing to $162,164 ($270,274 for medical specialists)

Wyoming

- On March 19, 2025, Wyoming enacted a law that *voids* non-compete agreements entered into **on or after July 1, 2025**, unless it relates to:

  (1) executive and management personnel, their professional staff, and officers;

  (2) recovering qualified expenses related to relocating, education, and training;

  (3) the sale of a business/asset; and

  (4) trade secret protections.

  The statute also voids non-competes between physicians (but is silent on agreements between, e.g., a physician and a hospital).

Florida – "CHOICE" Act (effective July 3, 2025)

- **C**ontracts **H**onoring **O**pportunity, **I**nvestment, **C**onfidentiality, & **E**conomic Growth (CHOICE) Act
- Employer-friendly statute establishing when non-competes and garden-leave agreements are *presumed* enforceable
- Defines a "covered" non-compete as a written agreement lasting ***up to 4 years*** within a defined geographic area
- **Enforceability triggered if employee either**:
  - Provided same or similar services in the 3 years *before* the restriction, or
  - Is likely to use the employer's confidential/trade secret information or customer relationships
- **Required Elements for Enforceable Non-Competes**
  - Employer must give written notice of right to seek counsel 7+ days before signing
  - Employee must acknowledge in writing access to confidential information / relationships
  - Non-compete period is reduced day-for-day by any non-working garden-leave notice period

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Florida – CHOICE Act (cont'd)

- **Covered garden leave** = written agreement **requiring up to 4 years' notice** before separation, employee receives salary and benefits during notice period
  - After 90 days of notice, employee no longer required to perform services
- **Employee may**:
  - ✓ Engage in non-work activities during normal business hours
  - ✓ Work elsewhere during the remaining notice period with employer permission
  - ✓ Employer may reduce notice period with 30+ days' written notice

- **Required Elements for Enforceable Garden Leave Agreements**
  - ➢ Employer must give written notice of right to seek counsel 7+ days before signing
  - ➢ Employee must acknowledge in writing access to confidential information / relationships

- DOES NOT apply to confidentiality or non-solicitation agreements, or to non-competes/garden leave terms outside the CHOICE Act
- Applies to employees with a primary place of work in Florida or agreements expressly governed by Florida law

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To be determined…New York and New Jersey

NEW YORK (introduced February 2025)

- **Senate Bill S4641A:** seeks to prohibit nearly all non-compete agreements for employees, independent contractors, and consultants.
- **Key Provisions:** The proposed ban generally *exclude*s high-level executives and those earning over $500,000 annually. It also targets "no-service/non-acceptance" clauses preventing work with former clients.
- **Healthcare Exception:** Specific, narrower legislation (S4641) aims to ban non-competes for healthcare professionals, including doctors, dentists, and nurses.

NEW JERSEY (introduced May 2025)

- **Senate Bill S4385 (and A5708):** seeks to ban and *retroactively* eliminate most non-compete and "no-poach" agreements.
- **Limited Exceptions**: generally allowing them only for specific "senior executives" (capped at one year) *or* during the sale of a business

STATUS: both NY and NJ bills are still pending; each represent a strong state-legislative push to restrict employer usage of non-competes and non-solicits post-FTC-ban efforts

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Other State Legislation to Watch in 2026

- **Indiana:** proposal to ban non-competes for anyone making less than $150,000 annually; proposal to ban use of non-competes with plumbers
- **New Hampshire:** proposal to raise the income threshold for state's non-compete ban from 200 percent to 500 percent of the federal minimum wage and limit the duration of non-competes for one year only
- **Utah:** proposed ban on non-competes for independent contractors, employees making $155,000 or less annually, and employees terminated without cause. Limits non-compete enforceability to 25 miles and requires full payment of the employee's salary throughout the duration of the non-compete.

Other State Legislation to Watch in 2026

- **Virginia:** proposal makes non-competes unenforceable when an employer discharges the employee without providing severance. If employer does provide severance, limits the duration of non-compete to duration of severance benefits.
- **Massachusetts:** three competing proposals; one to ban non-competes entirely, one to ban veterinarian non-competes; and one that would require consideration to be "reasonably related to the requirements of the garden leave clause" (i.e., at least 50% of base salary).

State Focus on Training Repayment Agreements ("TRAPS")

- **TRAPs –** provisions in employment agreements where employee must reimburse for training/education paid by employer if leave before set period of time
- **New York –** "Trapped at Work Act" effective December 2025, bars most TRAP agreements subject to certain exceptions; subject to monetary penalties
- **California –** ban on TRAP agreements and "stay or pay" agreements, effective January 1, 2026
- **Colorado –** "TRAPs" law went into effect in <u>2024</u> putting specific requirements/mechanisms in place to dissuade use as unenforceable penalty

Judicial Decisions on Enforceability of Restrictive Covenants

- **Massachusetts -** *Miele v. Foundation Medicine, Inc.*
  - State's highest court (2025) confirmed the 2018 non-compete law does not cover non-solicitation agreements, even if tied to forfeiture provisions
  - Decision reverses a trial-court ruling and limits the statute's reach in employer–employee disputes

- **Delaware -** *North American Fire Ultimate Holdings LP v. Doorly*
  - Plaintiff seeks to enforce restrictive covenants against a former executive, Alan Doorly, to stop him from competing with his former company.
  - Supreme Court reviewing whether non-compete and non-solicit restrictions tied to company-share grants remain enforceable when shares are forfeited
  - Courts signaling greater scrutiny of "consideration" and legitimate business interests
  - Delaware Chancery Court has become increasingly skeptical of enforcing non-competes

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Key Takeaways

- **Review and Enhance Restrictive Covenant Agreements and Policies/Procedures**
  - Conduct a comprehensive review of existing agreements on annual basis
  - Implement updates to align with current legal standards; confirm policies match updates (if any)
- **Customizable Restrictions for Maximum Protection**
  - Tailor restrictions to address specific business needs, monitor choice of law provisions
    - Non-solicit clauses for sales representatives
    - Non-compete clauses for C-Suite and executives
    - Non-disclosure clauses for mid-level employees and below who are non-customer facing
- **Consideration of State-Specific Nuances**
  - Recognize the importance of adapting strategies to accommodate state-specific legal requirements
  - Ensure compliance with regional regulations for comprehensive protection

Computer Fraud and Federal Enforcement Actions

Major Themes in Computer Fraud Abuse Act Litigation

- **CFAA Law:** Computer Fraud and Abuse Act of 1986 (“CFAA”), 18 U.S.C. § 1030, for fraud and related activities with computers, including prohibiting unauthorized access to “protected computers” and obtaining information through such access, with civil and criminal penalties
- **Rejection of "Misuse" Theory:** Violating employer’s technology or IT policy NOT a federal crime, forcing companies to rely on breach of contract or trade secret laws instead (DTSA or state statutes)
- **Focus on Hacking:** CFAA is increasingly strictly interpreted as “anti-hacking” statute, requiring evidence of an actual “hack” rather than simply violating company usage policies (especially in the wake of 2021 SCOTUS *Van Buren* decision)

Violation of Company IT Policy is Not a CFAA Violation

- ***NRA Group, LLC v. Durenleau,*** 154 F.4th 153 **(3rd Cir. 2025):**
  - Violating company computer-use policies **is NOT** a CFAA violation if the employee had authorized access to the system
  - Court applied *Van Buren's* "gates-up-or-down" test:
    - CFAA only applies when employee accesses areas not permitted to access;
    - Does not apply when employee misuses information or access for personal reasons.
  - **Impact**: Further restricts employers' ability to use the CFAA to sue employees for **data misuse or improper computer use** when access itself was allowed.

False Claims Act (FCA) Prosecutions for Cyber-Fraud

- Not the CFAA, but DOJ used the False Claims Act (FCA) as a major, high-value tool for "cyber-fraud", announcing highest ever annual recovery of over $6.8 billion for 2025 enforcement actions
- Trend shows DOJ is increasingly using FCA to punish companies for failing to meet cybersecurity standards in federal contracts, regardless of whether a data breach occurred

- **HealthNet Federal Services/Centene Corp. ($11.2 million):** Settled allegations of false cybersecurity certifications in government contracts.
- **Illumina, Inc. ($9.8 million):** Settled allegations of selling products with known cybersecurity vulnerabilities in genomic sequencing systems.
- **MORSECORP ($4.6 million)**: Settled allegations regarding failed baseline cybersecurity controls in contracts with the Departments of the Army and Air Force

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2025 Notable Trade
Secrets Cases

Willful Theft Equals Increased Penalties

- *Sonrai Systems, LLC v. Romano et al.,* Case No. 16-cv-03371, N.D. Ill., July 2025:
  - After nearly a decade of litigation based on failed partnership negotiations between Sonrai and The Heil Company, an executive resigned from Sonrai and allegedly helped Heil use Sonrai's confidential "Vector" technology to develop competing technology for use in garbage trucks
  - After trial, jury awarded **$30 million in punitive damages** and nearly **$29 million in actual damages**—totaling over $59 million—for trade secret misappropriation, highlighting severe penalties for willful theft findings

Failure to Protect Trade Secrets Can Lead to Dismissal

- ***10th Circuit tightening trade-secret standards***
  - *Recent rulings show greater emphasis on specific identification of trade secrets and proof of reasonable protection efforts*

- ***Double Eagle Alloys v. Hooper,* 134 F.4th 1078 (10th Cir. 2025)**
  - *Affirming summary judgment in favor of defendant on DTSA and OUTSA claims; Court rejected claims where alleged trade secrets were readily ascertainable and not sufficiently confidential*

- ***Snyder v. Beam Technologies, 147 F.4th 1246* (10th Cir. 2025)**
  - *Affirming summary judgment in favor of defendant; former employee's trade secret claim failed due to insufficient security measures and lack of reasonable efforts to protect alleged secrets*

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Emerging Case Law: Speed in Responding to Misappropriation is Critical

1

Elite Semiconductor, Inc., v. Anchor Semiconductor

(N.D. Cal. Jan. 13, 2025)

- Statute of limitations begins running upon discovery of any evidence of misappropriation, even if ultimately unable to prove claim.

2

***Pliteq, Inc. v. Mostafa*, 775 F. Supp. 3d 1231, 1259 (S.D. Fla. Mar. 31, 2025)**

Delay of approximately 2 months after learning of data breach was not fatal to request for injunctive relief, although Court noted it was a close call and credited Plaintiff for trying to arrange informal return in the interim.

3

***iTalent v.* Kotha (N.D. Cal. Sept. 19, 2025)**

"The Court notes that the gap in time between iT's filing of the initial complaint and submitting the TRO application is explained by the need to conduct a thorough investigation before asking the Court for relief."

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Emerging Case Law: Protective Measures are Key

1

***PhysioTherapy Assoc. v. ATI Holdings* (N.D. Ala.)**

- Password protections for electronic accounts alone may not be enough.
- Courts increasingly looking to other levels of protection to see if sufficient steps were taken.

2

***Yellowfin Yachts, Inc. v. Barker Boatworks LLC* (11th Cir.)**

- Failure to follow through on practices during employment.
- Failure to follow up on evidence of exfiltration after employment.

3

***BCOWW Holdings, LLC v. Collins*, (W.D. Tex.)**

- Applying trade secret protections internally v. externally.
- Once information is out in the public, it's no longer a trade secret.

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Emerging Case Law Trends: the "California Model" of Early Particularity

- Courts outside of California increasingly requiring an upfront identification of particular trade secrets, rather than after engaging in discovery.
- *Integrity Sols., Ltd v. MCS Consulting, Inc.*, D. Colo. Apr. 25, 2025) (explaining that a plaintiff " 'will normally be required first to identify with reasonable particularity the matter which it claims constitutes a trade secret, before it will be allowed ... to compel discovery of its adversary's trade secrets.' ")
- *Terran Biosciences, Inc. v. Compass Pathfinder Ltd.*, (D. Md. June 3, 2025) (particularity requirement is fact dependent on each case).
- If someone asked you tomorrow what your 3 most important trade secrets are, could you explain what those are in plain English?

Impact of Artificial Intelligence on Trade Secrets

- ***OpenEvidence Inc. v. Pathway Medical, Inc. et al.*** (D. Mass., Case No. 25-cv-10471):
  - OpenEvidence filed suit claiming that Pathway Medical and other defendants improperly used stolen credentials and malicious inputs to steal trade secrets and create a “copycat” product
  - Addressed whether manipulating a generative AI model through "prompt injection" attacks to steal a proprietary "system prompt" constituted trade secret misappropriation (suit dismissed in October 2025).
- **Case Raises Significant Issues in Generative AI Landscape:**
  - How to protect generative AI models as trade secrets;
  - How to protect trade secrets in use of AI models (closed versus open environment)
  - Scope of “improper means” in use of AI; whether automated scraping and using “bots” to extract data can constitute misappropriation of trade secrets
  - Emphasis on “reasonable efforts” to protect -- making data security and access controls all the more important if going to raise trade secrets claim

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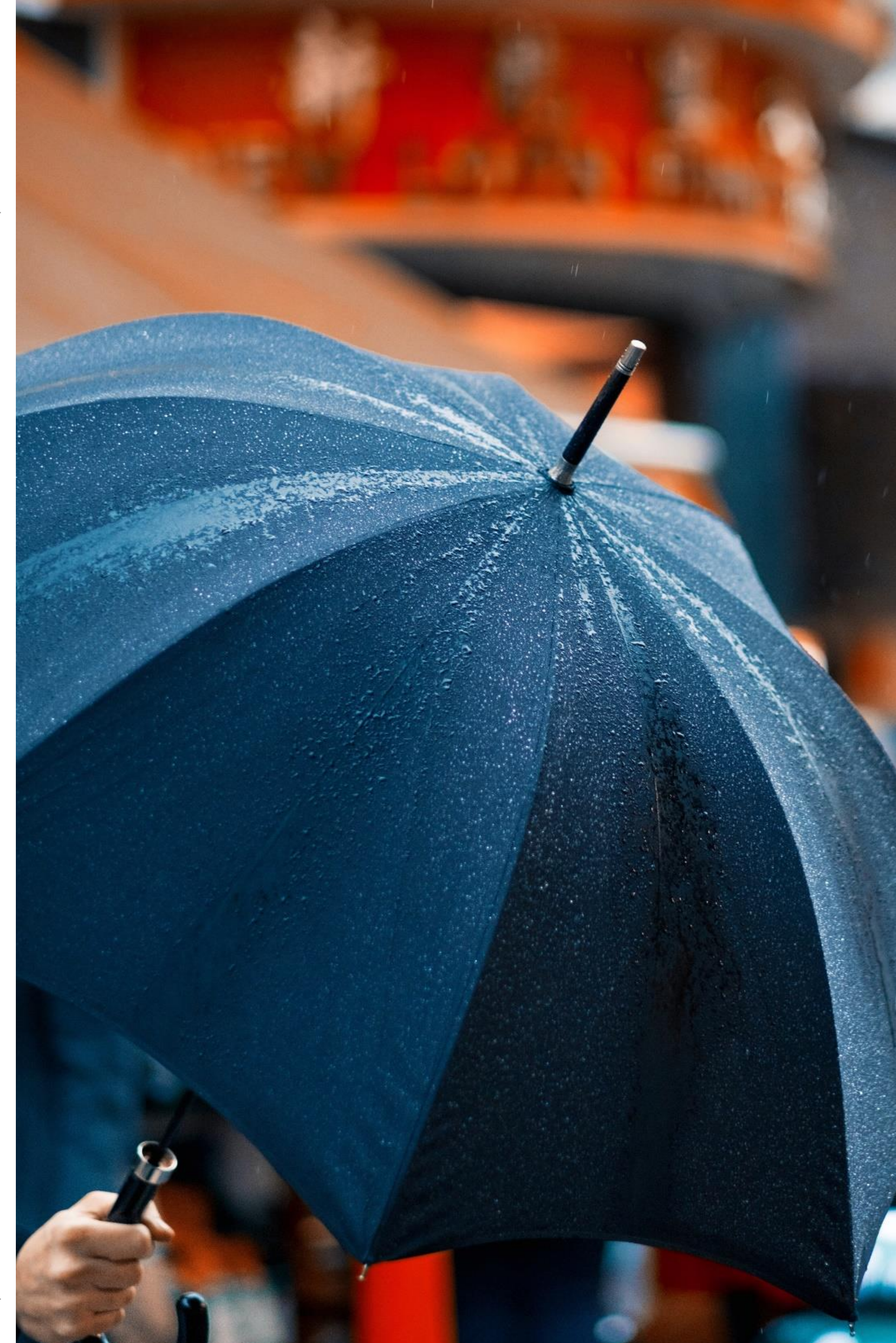
Practical Solutions
and Tips for Trade
Secret Protection

Typical Measures to Protect Trade Secrecy Should Include:

- **Agreements with Employees**
  - Offer letters
  - NDAs, Return of Materials, Post-Employment Restrictive Covenants
- **Employee Policies and Handbooks – Written and Available**
  - Confidentiality, Privacy, BYOD
  - Include certifications of receipt/review
- **Confidentiality Agreements with Third Parties**
  - Clients, vendors, contractors, suppliers, JV partners
  - Due diligence parties – targets, acquirers, underwriters
- **Secure network and facility**
  - Password protection of hardware and software
  - Need-to-know distribution of materials
  - "Lock and Key"
  - Monitoring tools (real time and after-the-fact)



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Create a Culture of Confidentiality

- Ensure employees understand what the company considers confidential, and why it is important to maintain confidentiality
  - Tie it in with client service
  - And make sure to get it back

- Treat others how you would like to be treated!

- Provide training modules with examples of “dos” and “don’ts”
  - Identify industry standards

- Mark things confidential/proprietary

- Make security protocols easy to understand, familiar, and uniform

Protection = Reasonable Efforts to Maintain Secrecy

Take actual efforts to maintain secrecy, including:

- Confidentiality agreements = leading indicator
- Information security
    - Password protection
    - Email and electronic data policies (beware of BYOD)
    - Confidentiality reminders on screens and documents

- Limit access—need to know/tiered access
- Must take action against breaches (does not always require filing suit)
- Regular training on policies (consider trackable e-modules)
- Onboarding, exit interviews, and related documentation (audit this)
- Limit information made available to vendors and subcontractors and have appropriate contracts with vendors

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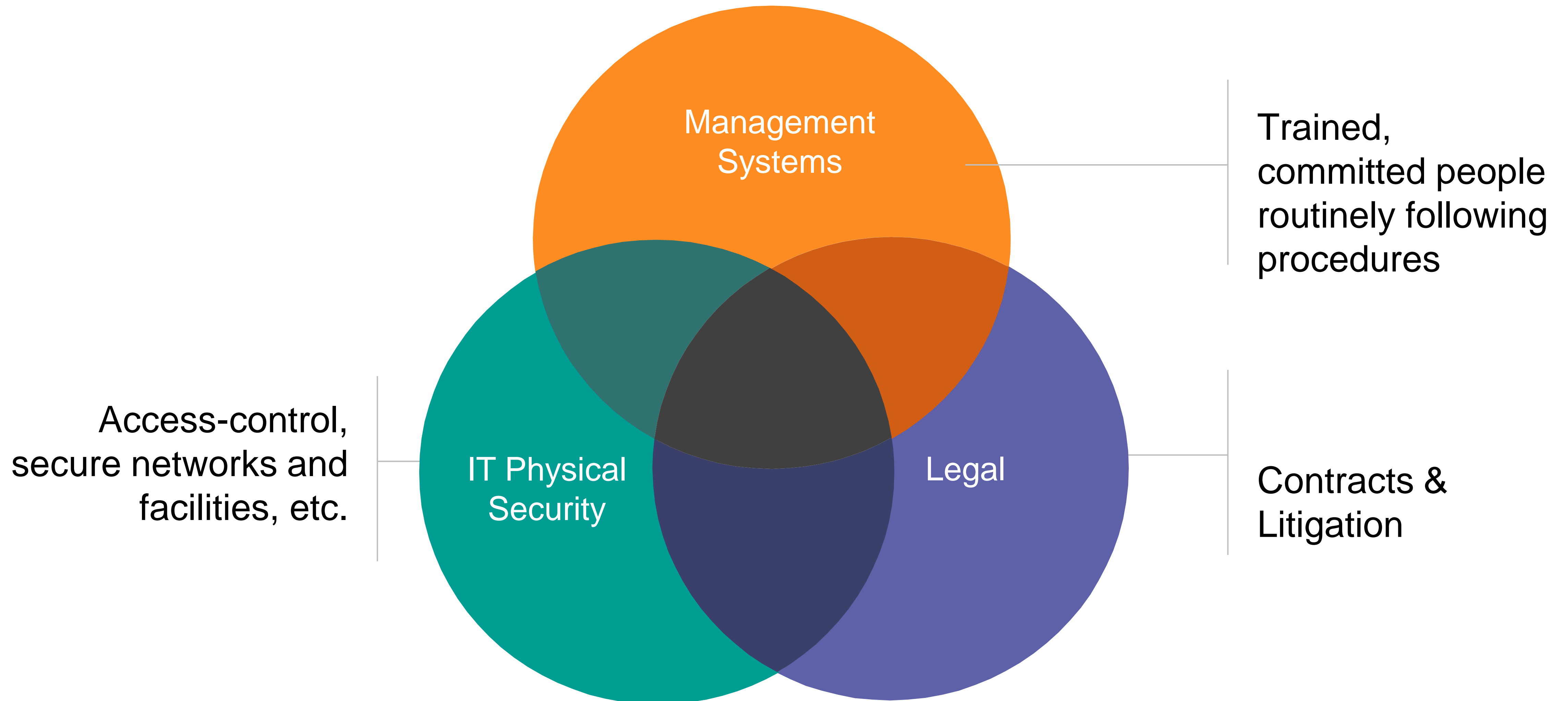
Pillars of Effective Trade Secret Protection



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