

Trade Secret Laws: Louisiana

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A Q&A guide to state law on trade secrets and confidentiality for private employers in Louisiana. This Q&A addresses the state-specific definition of trade secrets and the legal requirements relating to protecting them. Federal, local, or municipal law may impose additional or different requirements. Answers to questions can be compared across a number of jurisdictions (see Trade Secret Laws: State Q&A Tool).

Overview of State Trade Secret Law

1. List the laws (statutes and regulations) by name and code number, both criminal and civil, that your state has adopted governing trade secrets.

Louisiana has adopted the Louisiana Uniform Trade Secrets Act (La. R.S. 51:1431 to 51:1439), often referred to as the LUTSA to distinguish it from the model Uniform Trade Secrets Act.

Louisiana's evidentiary and procedural codes also address trade secrets in the course of litigation, creating a privilege against disclosure and requiring protective measures if disclosure is ordered (La. Code Evid. Ann. art. 513; La. Code Civ. Proc. art. 1426(A)(7)).

On June 15, 2017, Louisiana repealed its criminal statute which prohibited business record theft and applied to trade secrets as defined by the LUTSA.

2. Has your state adopted the model Uniform Trade Secrets Act (UTSA)? If so, please:

- Identify which among the statutes listed in response to Question 1 is your state's adopted version of the UTSA.
- Describe any significant differences between your state's adopted version and the model UTSA.

Adopted Version of Model UTSA

In 1981, Louisiana adopted the 1979 version of the Uniform Trade Secrets Act (UTSA). The Louisiana legislature has not amended their Uniform Trade Secrets Act to reflect the 1985 amendments to the UTSA.

Significant Differences Between Adopted Version and Model UTSA

Unlike the UTSA, Louisiana's Uniform Trade Secrets Act does not allow for exemplary damages (La. R.S. 51:1433).

As the Louisiana statute is based on the 1979 version of the UTSA, it does not permit the complainant to recover damages measured by a reasonable royalty in lieu of actual loss or unjust enrichment.

3. List any common law protections afforded to trade secrets. If common law protections are afforded to trade secrets, are they preempted by available state statutes?

The Louisiana Uniform Trade Secrets Act (LUTSA) preempts conflicting:

- Tort laws.
- Restitutionary laws.
- Other Louisiana laws pertaining to civil liability for trade secret misappropriation.

(La. R.S. 51:1437(A).)



However, the LUTSA does not affect:

- Contractual or other civil liability or relief that is not based on trade secret misappropriation.
- Criminal liability for trade secret misappropriation.

(La. R.S. 51:1437(B).)

For example, courts have found that:

- While the LUTSA does preempt common law claims for conversion of trade secrets, it does not preempt common law claims for conversion of confidential information that is not a trade secret (*Brand Services, L.L.C. v. Irex Corp.*, 909 F.3d 151, 157 (5th Cir. 2018) (analyzing Louisiana law)).
- Even after the LUTSA's adoption, a breach of fiduciary duty claim based on confidential information misappropriation, although not technically a trade secret, is still recognized as grounds for injunctive relief and may serve as a basis for relief under Louisiana's Unfair Trade Practices Act (*Defcon, Inc. v. Webb*, 687 So. 2d 639, 643 (La. Ct. App. 1997)).

For more information on preemption under the LUTSA, see Question 13.

Definition of Trade Secret

4. How does your state define a trade secret under each law identified in Question 1 (statute or regulation) and Question 3 (common law)?

The Louisiana Uniform Trade Secrets Act (LUTSA) defines a trade secret as information:

- Including:
 - a formula;
 - a pattern;
 - a compilation;
 - a program;
 - a device;
 - a method;
 - a technique; or
 - a process.
- That derives independent economic value, actual or potential, from:

- not being generally known to others who can obtain economic value from its disclosure or use; and
 - not being readily ascertainable by proper means by others who can obtain economic value from its disclosure or use.
- That is the subject of reasonable efforts under the circumstances to maintain its secrecy.

(La. R.S. 51:1431(4).)

Neither the Louisiana Code of Evidence nor the Louisiana Code of Civil Procedure specifically defines the term trade secret (La. Code Evid. Ann. art. 513). However, the Louisiana Courts of Appeals have used the LUTSA trade secret definition to determine whether information was a trade secret for purposes of an evidentiary privilege and entitlement to a protective order (*Fox v. Fox*, 164 So. 3d 359, 364 (La. Ct. App. 2015); *In re Marriage of Kuntz*, 929 So. 2d 75, 78-79 (La. Ct. App. 2006), rev'd on other grounds, 934 So. 2d 34 (La. 2006)).

5. Describe any significant cases in your state creating, modifying, or clarifying the definition of a trade secret.

Under Louisiana law, whether information is a trade secret is a question of fact (*Millet v. Crump*, 687 So. 2d 132, 135 (La. Ct. App. 1996)). The holder of a property right in a trade secret extinguishes the right if it is disclosed to others with no obligation of confidentiality (*Sheets v. Yamaha Motors Corp., U.S.A.*, 849 F.2d 179, 183-84 (5th Cir. 1988) (applying the Louisiana Uniform Trade Secrets Act)).

In discussing Louisiana law, the United States Court of Appeals for the Fifth Circuit held that a person using another's trade secret is liable even if they add their own modifications or improvements to it, if the substance of the process used was derived from the other's trade secret (*Reingold v. Swiftships, Inc.*, 126 F.3d 645, 651 (5th Cir. 1997)). While acknowledging that Louisiana cases have not yet precisely articulated this principle, the Fifth Circuit explained that it thought that Louisiana courts would adopt it (*Reingold*, 126 F.3d at 651).

6. What are examples of information that courts in your state:

- Have found to be trade secrets?
- Have found not to be trade secrets?
- Have found not to be trade secrets as a matter of law?

Trade Secrets

Louisiana courts and federal courts applying Louisiana law found the following types of information to be protectable trade secrets under the circumstances:

- Chemical formulae that were not generally known or readily ascertainable by proper means (*Wright Chem. Corp. v. Johnson*, 563 F. Supp. 501, 504 (M.D. La. 1983) (applying the Louisiana Uniform Trade Secrets Act)).
- The method and process of assisting and instructing businesses in a particular industry (*S. E. Auto Dealers Rental Ass'n, Inc. v. EZ Rent to Own, Inc.*, 980 So. 2d 89, 99-100 (La. Ct. App. 2008)).
- A computer disk, Rolodex cards, a cell phone's memory chip, AutoCAD drawings, and confidential bidding and pricing information (*B & G Crane Serv., L.L.C. v. Duvic*, 935 So. 2d 164, 167-69 (La. Ct. App. 2006)).
- Customer and special pricing lists where the owner took reasonable efforts to maintain their secrecy (*Fox*, 164 So. 3d at 364; *Pontchartrain Med. Labs, Inc. v. Roche Biomedical Labs, Inc.*, 677 So. 2d 1086 (La. Ct. App. 1996)).

Not Trade Secrets

Courts have found the following types of information not to be protectable trade secrets under the circumstances:

- Various types of information related to an industrial product's design because the defendant showed that the information was available to the industry and was not secret (*Frank's Casing Crew & Rental Tools, Inc. v. Sipos*, 6 So. 3d 298, 302 (La. Ct. App. 2009)).
- A corporation's profit and loss statement (*Autocount, Inc. v. Automated Prescription Sys., Inc.*, 651 So. 2d 308, 312 (La. Ct. App. 1995)).
- Customer lists including firms that were widely known in the industry (*Creative Risk Controls, Inc. v. Brechtel*, 847 So. 2d 20, 25-26 (La. Ct. App. 2003)).
- Rates and other information made freely available to potential customers through brochures with no restrictions on their use (*Creative Risk*, 847 So. 2d at 25-26).
- Lists of nurses, salary information, customer lists, and nursing agency rates, because the information was widely known or readily accessible (*Nursing Enters., Inc. v. Marr*, 719 So. 2d 524, 529-30 (La. Ct. App. 1998)).
- A buying cooperative's membership list because it was available to group members and prospects (*United Grp.*

of Nat'l Paper Distribs., Inc. v. Vinson, 666 So. 2d 1338, 1345 (La. Ct. App. 1996)).

- A buying cooperative's supplier contracts including discount information, because they were available to group members (*United Grp.*, 666 So. 2d at 1345).
- The identities of a home medical supply company's clients, where the computer in which the client information was stored was freely accessible, and the company never required employees to sign any kind of confidentiality or non-disclosure agreements prohibiting disclosure of such information (*Wyatt v. PO2, Inc.*, 651 So. 2d 359, 363 (La. Ct. App. 1995)).

Not Trade Secrets as a Matter of Law

There are no Louisiana cases holding that information is not a trade secret as a matter of law.

7. To what extent have:

- Customer, client, or subscriber lists been given trade secret protection?
- Former employees been enjoined from using former employer's customer information?

Louisiana courts have stated that customer lists can be protected as trade secrets if efforts are made to protect their confidentiality (*Bihm v. Deca Sys., Inc.*, 226 So. 3d 466, 484-85 (La. Ct. App. 2017); *Pontchartrain Med. Labs*, 677 So. 2d at 1090 (La. Ct. App. 1996)).

However, courts are unlikely to consider customer lists trade secrets if the information is readily available. For example, the Louisiana Court of Appeal for the Second Circuit held that a customer list was not a trade secret because the names and numbers of the hospitals and other medical providers were easily accessible through the local telephone book (*Nursing Enters., Inc.*, 719 So. 2d at 529-30).

For more information on customer lists, see Question 6.

Reasonable Efforts to Maintain Secrecy

8. What efforts to maintain secrecy have been deemed reasonable or sufficient for trade secret protection by:

- Courts in your state?
- Statutes or regulations in your state?

Courts

Louisiana courts only require relative secrecy and reasonable efforts under the circumstances to maintain secrecy (*Sheets*, 849 F.2d at 183-84). Reasonable use of a trade secret, including controlled trade secret disclosure to employees and licensees, is consistent with the relative secrecy requirement (*Marine Pile Drivers, L.L.C. v. Welco, Inc.*, 988 So. 2d 878, 881 (La. Ct. App. 2008)).

By contrast, there is no property right in a trade secret if one discloses a trade secret to another with no obligation of confidentiality (*Sheets*, 849 F.2d at 183-84). A federal court applying the Louisiana Uniform Trade Secrets Act (LUTSA) found that an inventor did not take reasonable efforts where they allowed a corporation's representatives to photograph and examine their invention (*Sheets*, 849 F.2d at 183).

Statutes or Regulations

LUTSA requires trade secret owners to use reasonable efforts under the circumstances to maintain secrecy for information to receive trade secret protection (La. R.S. 51:1431(4)). The comments to La. R. S. 51:1431 indicate reasonable efforts to maintain secrecy have included:

- Advising employees of the existence of a trade secret.
- Limiting access to a trade secret on a need-to-know basis.
- Controlling plant access.

(La. R.S. 51:1431 cmt. f.)

However, the comments caution that certain actions can preclude protection, including public disclosure of information through:

- Display.
- Trade journal publications.
- Advertising.
- Other carelessness.

(La. R.S. 51:1431 cmt. f.)

Trade Secret Misappropriation Claims

9. For any law identified in Question 1 (statutes or regulations) or Question 3 (common law), what must a plaintiff show to prove trade secret misappropriation?

To prove a violation of the Louisiana Uniform Trade Secrets Act (LUTSA), a plaintiff must show:

- A legally protected trade secret existed.
- An express or implied contractual or confidential relationship existed between the parties obligating the recipient of alleged secret material not to use or disclose it.
- A recipient breached their duty of trust or confidence by disclosing or using information to the injury of the owner of the trade secret.

(*Pontchartrain Med. Labs.*, 677 So. 2d at 1090.)

LUTSA defines misappropriation in three different ways:

- Acquisition.
- Disclosure.
- Use.

(La. R.S. 51:1431(2).)

Acquisition as Misuse

A trade secret can be misappropriated where the acquirer knew or had reason to know that the trade secret was acquired by improper means (see Definition of Improper Means; La. R.S. 51:1431(2)(a)).

Disclosure or Use of Trade Secret as Misuse

Disclosure or use of another's trade secret without express or implied consent can be misappropriation where the person either:

- Used improper means to acquire knowledge of the trade secret.
- At the time of disclosure or use, knew or had reason to know that their knowledge of the trade secret was:
 - derived from a person using improper means to acquire it;
 - acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or
 - derived from a person owing a duty to maintain its secrecy or limit its use.
- Before a material change of their position, knew, or had reason to know that:
 - the information was a trade secret; and
 - knowledge was acquired by accident or mistake.

(La. R.S. 51:1431(2)(b).)

Definition of Improper Means

Improper means include:

- Theft.
- Bribery.
- Misrepresentation.
- Breach or inducement of a breach of a duty to maintain secrecy.
- Espionage through electronic or other means.

(La. R.S. 51:1431(1).)

By contrast, the comments to Section 51:1431 of the Louisiana Revised Statutes indicate proper means includes:

- Discovery:
 - by independent invention;
 - by reverse engineering; or
 - under a license from the trade secret owner.
- Observation of the item in public use or on public display.
- Obtaining the trade secret from published literature.

(La. R.S. 51:1431 cmt. a.)

10. Can corporations, corporate officers, and employees of a competing company in possession of the trade secrets of others be held liable for misappropriation in your state? If so, under what circumstances?

Competing corporations, corporate officers, and employees of a competing company can be held liable for trade secret misappropriation. Under the Louisiana Uniform Trade Secrets Act (LUTSA), persons who may be held liable for misappropriation include:

- Natural persons.
- Corporations.
- Business trusts.
- Estates.
- Trusts.
- Partnerships.
- Associations.
- Joint ventures.
- Governments.

- Governmental subdivisions or agencies.
- Any other legal or commercial entity.

(La. R.S. 51:1431(3).)

LUTSA defines misappropriation to include acquisition of a trade secret that a person knows or has reason to know was acquired by improper means (La. R.S. 51:1431(2)(a)). For example, a company that accepts and uses stolen trade secrets from another corporation's former employee can be liable to the holder of the trade secret (*B & G Crane Serv., L.L.C.*, 935 So. 2d at 166-70).

For more information on misappropriation, see Question 9.

Defenses

11. For any law identified in Question 1 (statutes and regulations) or Question 3 (common law), what defenses are available to defend against claims under the statute or common law?

Defenses to a trade secret misappropriation claim under Louisiana law include:

- The information is not a trade secret (see Questions 4 and 5).
- There was no misappropriation (see Question 9).
- The three-year statute of limitations has expired (see Question 12).
- Lack of standing to sue.
- The plaintiff's claims are preempted by the Louisiana Uniform Trade Secrets Act (see Questions 3 and 19).
- The defendant did not know or have reason to know about the misappropriation (see Question 9).
- The defendant used proper means to obtain the trade secret (see Question 9).
- Equitable defenses, including unclean hands, laches, judicial estoppel, and *in pari delicto* (a denial of relief due to the plaintiff's participation in the tortious conduct).

Statute of Limitations

12. For any law identified in Question 1 (statutes and regulations) or Question 3 (common law), please identify the relevant statute of limitations for bringing a claim.

The Louisiana Uniform Trade Secrets Act imposes a three-year statute of limitations. Specifically, the three-year period begins to run from when the misappropriation either:

- Is discovered.
- Should have been discovered by the exercise of reasonable diligence.

(La. R.S. 51:1436.)

A continuing misappropriation is a single claim (La. R.S. 51:1436).

Other Related Claims

13. What other claims, statutory or common law, can a plaintiff bring in your state against a defendant in the event of wrongful acquisition, misuse, or disclosure of a trade secret?

Depending on the circumstances, a plaintiff in Louisiana may be able to allege a trade secret misappropriation claim under the Louisiana Uniform Trade Secrets Act (LUTSA) and a breach of fiduciary duty claim based on the misappropriation of confidential information under Louisiana's Unfair Trade Practices Act (*First Am. Bankcard, Inc. v. Smart Bus. Tech., Inc.*, 178 F. Supp. 3d 390, 399 (E.D. La. 2016); *Defcon*, 687 So. 2d at 643).

The US Court of Appeals for the Fifth Circuit, analyzing Louisiana law, concluded that LUTSA preempts a common law claim for conversion of trade secrets (*Brand Servs.*, 909 F.3d at 158-59 (5th Cir. 2018)).

In one case, a party alleged claims for breach of fiduciary duty and trade secret misappropriation under Louisiana law. The party merely restated the same allegations to support both its trade secrets misappropriation claim and its breach of fiduciary duty claim. The Court of Appeals for the Fifth Circuit noted that a LUTSA claim cannot serve as the basis for a fiduciary duty claim because LUTSA's preemption section supplants conflicting tort, restitutionary, and other Louisiana laws pertaining to civil liability for trade secret misappropriation. (*Omnitech Int'l, Inc. v. Clorox Co.*, 11 F.3d 1316, 1330 (5th Cir. 1994) (applying Louisiana law).)

The Fifth Circuit's treatment of this issue indicates that if a party wishes to bring other claims in addition to a trade secret misappropriation claim, the party must support them with different allegations than those supporting its LUTSA claim.

For more information on preemption under LUTSA, see Question 3.

Remedies

14. For any law identified in Question 1 (statutes and regulations) and Question 3 (common law), please describe the potential relief available to plaintiffs.

Potential relief under the Louisiana Uniform Trade Secrets Act (LUTSA) includes:

- Injunctive relief (La. R.S. 51:1432(A)).
- Monetary damages for actual loss or unjust enrichment (La. R.S. 51:1433).
- Attorneys' fees, under certain circumstances (La. R.S. 51:1434).
- A reasonable royalty (La. R.S. 51:1432(B)).
- Court order compelling affirmative acts to protect a trade secret (La. R.S. 51:1432(C)).

Notably, exemplary damages are not available under LUTSA. Moreover, because Louisiana adopted the 1979 version of the UTSA, LUTSA does not provide for the recovery of damages measured by a reasonable royalty in lieu of actual loss or unjust enrichment.

Contractual Protections

15. What factors do courts in your state consider when assessing the enforceability of a nondisclosure or confidentiality agreement?

Unlike a covenant not to compete, a confidentiality agreement cannot be challenged as an unreasonable restraint of trade. Confidentiality agreements are enforceable in Louisiana and not subject to the prohibition and requirements of Louisiana's statutory restraint of business law. (*NovelAire Techs., L.L.C. v. Harrison*, 50 So. 3d 913, 918-19 (La. Ct. App. 2010).) Under Louisiana's restraint of business law, a non-compete is valid only if it meets certain geographic and temporal limitations (La. R.S. 23:921; *NovelAire*, 50 So. 3d at 918).

One Louisiana state court found that neither of the following were non-compete agreements:

- Requiring that an employee disclose their discoveries to their employer.
- Prohibiting an employee from disclosing confidential information.

(*NovelAire*, 50 So. 3d at 919.)

For more information on non-competes in Louisiana, see [State Q&A, Non-Compete Laws: Louisiana](#).

There are no opinions applying Louisiana law indicating whether a court may revise or reform a confidentiality agreement. As a general principle, if a contract contains a severability provision, a court may sever any offending provisions and enforce the remaining provisions.

Miscellaneous

16. What common law duties are recognized in your state that prohibit employees from disclosing employer information even absent an independent contractual obligation?

Under Louisiana law, even absent a nondisclosure contract, an agent has an implied duty not to use or communicate information given to them in confidence to compete with or injure their principal, unless the information is a matter of general knowledge (*NCH Corp. v. Broyles*, 749 F.2d 247, 254 (5th Cir. 1985) (applying Louisiana law)).

After the agency terminates, the agent has a duty not to use or disclose trade secrets or other similar confidential matters to third persons, on their own account or on account of others, in competition with the principal or to their injury. These rules apply to:

- Confidential information.
- Information the agent should know their principal would not want revealed to others or used in competition with them.

(*NCH Corp.*, 749 F.2d at 254.)

The prohibition applies to:

- Unique business methods of the employer.
- Trade secrets.
- Lists of names.
- All other matters which are peculiarly known in the employer's business.

(*NCH Corp.*, 749 F.2d at 254.)

17. Does your state recognize the doctrine of inevitable disclosure?

There are no Louisiana state court opinions that have discussed or adopted the inevitable disclosure doctrine. However, the US District Court for the Eastern District of Louisiana concluded that it could not grant an injunction based on the inevitable disclosure doctrine against an employee working for their former employer's competitor because it would contravene Louisiana's statute disfavoring covenants not to compete (*Standard Brands, Inc. v. Zumpe*, 264 F. Supp. 254, 265 (E.D. La. 1967) (applying Louisiana law)).

More recent cases have continued to follow the *Standard Brands* rationale:

- In *NCH Corp. v. Broyles*, 563 F. Supp. 142, 145-46 (E.D. La. 1983) the court held that while covenants not to disclose trade secrets are generally enforceable Louisiana courts are effectively precluded by La. R. S. 23:921 from enjoining a defendant from working for a competitor or soliciting former clients simply because the new job may entail use of trade secrets.
- In *Engines Sw., Inc. v. Kohler Co.*, 2004 WL 7338693 (W.D. La. Mar. 19, 2004), the court held that a duty not to disclose confidential information exists for an agent even without a contract. However, a court will find there is nothing for a former employee to inevitably disclose where the previous employer failed to affirmatively protect the information as confidential. Louisiana public policy does not permit such actions.

18. What, if anything, have courts held regarding trade secret misappropriation claims involving memorizing trade secrets rather than the taking of tangible representations of information?

It is not fraud or an unfair trade practice for former employees to use experience and skills acquired in their former jobs in a competing business (*Action Revenue Recovery, L.L.C. v. eBusiness Group, L.L.C.*, 17 So. 3d 999, 1006 (La. Ct. App. 2009)). However, at least one federal district court has indicated that either the memorization or physical taking of trade secrets can violate the Louisiana Uniform Trade Secrets Act (*Restivo v. Hanger Prosthetics & Orthotics, Inc.*, 483 F. Supp. 2d 521, 534 (E.D. La. 2007)).

19. Do any of the laws identified in Question 1 (statutes and regulations) or Question 3 (common law) preempt other causes of action a plaintiff could assert related to trade secret misappropriation (for example, conversion, breach of fiduciary duty, unfair competition, or tortious interference)?

Depending on the circumstances, a plaintiff in Louisiana may be able to allege a trade secret misappropriation claim under the Louisiana Uniform Trade Secrets Act (LUTSA) and a breach of fiduciary duty claim based on the misappropriation of confidential information under Louisiana's Unfair Trade Practices Act (*Defcon*, 687 So. 2d at 643).

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The Fifth Circuit's treatment of this issue indicates that if a party wishes to bring other claims in addition to a trade secret misappropriation claim, the party must support them with different allegations than those supporting its LUTSA claim.

For more information on preemption under LUTSA, see Question 3.

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