

## What Can Employers Do About Document Theft?

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The New Jersey Supreme Court has held that in some cases, employees are permitted to take confidential documents from an employer without the employer's knowledge or permission. In *Quinlan v. Curtiss-Wright Corp.*, the Court enumerated several factors to be considered when an employee takes documents for a discrimination claim against an employer:

1. How the documents were accessed. This factor will weigh in the employee's favor if the employee accessed the documents in the normal course of his or her employment. However, if the employee snoops around the office for documents, it will weigh in the employers' favor.

2.

What the employee does with the documents. This factor will weigh in favor of the employee if the employee merely copies the documents and shares them with his or her attorney; however, if the employee distributes the confidential documents to the employee's coworkers, this factor will weigh in favor of the employer.

3.

The information contained in the documents. If the documents contain proprietary information or medical information about other people or employees, this factor will weigh in favor of the employer.

4.

The existence of company policy regarding confidential documents. This factor can weigh in an employer's favor if the employer has a policy regarding confidential documents, the employees are aware of the policy, and the policy is enforced.

5.

The circumstances surrounding the disclosure. This factor will weigh in the employee's favor if the documents are central to his or her discrimination claim, but it will weigh in the employer's favor if the documents are disclosed merely to disrupt the employer's business.

6.

The employee's reason for copying the documents. This factor allows courts to consider whether there is evidence that the employer would have discarded the documents, which would weigh in the employee's favor, and also whether the documents are critical to the employee's case, which would also weigh in the employee's favor.

7.

The document's relation to the remedial purpose of the Law Against Discrimination (i.e. to irradiate discrimination), as well as the documents' effect on the rights of the parties.

These factors are clearly employee friendly, so what can employers do? First, employers can have written policies regarding the treatment of confidential documents. These policies should be reviewed with employees and enforced in a non-discriminatory manner. Additionally, employers can limit employee access to

confidential documents, giving access to only a select few employees who need the documents to complete their job duties.

**TAKEAWAY:** Employers should review their employee handbooks to ensure they have a comprehensive policy regarding confidential documents, and that all employees have been trained on the policy.

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