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Trade Secrets 2026

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USA – Illinois: Trends and Developments

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USA – ILLINOIS

Trends and Developments

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ArentFox Schiff LLP is internationally recognised in core industries where business and the law intersect. Its trade secrets practice comprises 35 partners and 24 other lawyers firm-wide, combining IP, employment, white-collar, and transactional capabilities. Known for rapid-response injunction work, complex multi-forum disputes, cross-border discovery, and strategic counselling, we advise clients across industries and jurisdictions. Significant 2025 trials include representing as plaintiff in Fairfax County, Virginia, a leading government contractor against a competitor and a former employee, including complex data spoliation claims, and representing as defendant in the federal district court in Baton Rouge, Louisiana, a major pipe manufacturer in a cross-border licensing dispute. Other current matters include representing as plaintiff a global petrochemical company in the Delaware federal district court and representing as defendant in the new Texas Business Court a leading software developer for commercial airlines. Recent counselling work includes trade secret audits and drafting employment policies and non-compete agreements for clients in artificial intelligence, food and beverage, financial services, and pharmaceuticals.

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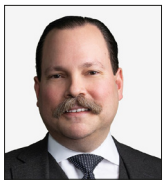

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Illinois trade secrets law has long been shaped by Chicago's economic prominence. Compared with the other leading US business centres, Chicago's economy for many decades has been unusually balanced across multiple sectors – heavy industry, consumer products, banking, insurance, financial markets, pharmaceuticals, retail and e-commerce, publishing and advertising, agricultural products, hospitality, and transportation, providing a cross-section of the US economy. Of course, southern Illinois remains heavily reliant on agriculture, and many Illinois judges and legislators were elected by farming communities far removed from the commerce of Chicago. Illinois case law reflects this unusual mix. The leading Illinois precedents include both high-stakes disputes for leading global companies and mom-and-pop retail shops suing over typewritten customer lists. The resulting body of law is both unusually well-developed compared with most other US jurisdictions and unusually well balanced between the interests of innovators and incumbents and between employers and employees.

Summary and Overview

Trade secrets in Illinois are governed by the Illinois Trade Secrets Act (ITSA), which adopted the Uniform Trade Secrets Act (UTSA) with some revisions, most notably a longer five-year statute of limitations. Illinois law was the first to recognise the inevitable disclosure doctrine in the landmark case *PepsiCo, Inc. v Redmond*, in which the Seventh Circuit, applying Illinois law, affirmed an injunction barring an executive's employment with a competitor based on the "inevitable" risk of trade secret misappropriation. In Chicago, both the Chancery Division of the Cook County Circuit Court and the United States District Court for the Northern District of Illinois are two of the most active courts in the United States for trade secrets litigation, and the judges of both courts have extensive experience managing expedited preliminary injunction proceedings. Although, in theory, Illinois state courts impose a more rigorous fact-pleading standard, as contrasted with notice pleading in the federal courts, in practice both state and federal court judges apply similar scrutiny, and the distinction is rarely outcome-dispositive in trade secrets cases.

Illinois has implemented reforms to protect employees against potentially oppressive non-compete agreements but still allows non-compete covenants of reasonable scope when supported by adequate consideration. As a result, employee restrictive covenants remain an important part of trade secret protection under Illinois law. The Illinois Freedom to Work Act (IFWA) sets compensation thresholds for employees who can be bound by restrictive covenants, codifies certain common law reasonableness requirements for enforcement, and provides one-way fee-shifting for the employee in some cases. Like many jurisdictions, Illinois distinguishes between employee restrictive covenants and covenants ancillary to the sale of a business, with employee restrictive covenants subject to stricter scrutiny. Illinois permits courts to re-write, and enforce as reformed, covenants that otherwise would be unenforceable as overbroad, but the courts will refuse to reform or blue pencil covenants that appear patently oppressive. The current trend is for judges applying Illinois law to show heightened sensitivity to the rights of employees, and older precedents must be considered with due regard for the trial court's broad discretion to apply the judge's assessment of fairness when balancing the equities between employer and employee.

Differences Between the Illinois Trade Secrets Act and the Uniform Trade Secrets Act

Although modelled on the Uniform Trade Secrets Act (UTSA), the Illinois Trade Secrets Act (ITSA) differs in several respects. First, the ITSA expands the definition of a trade secret expressly to include drawings, financial data, technical or non-technical data, and lists of actual or potential customers or suppliers. Although most states interpret the UTSA definition broadly enough to include these categories, the express language in the ITSA resolves any doubt. Second, the ITSA has a five-year statute of limitations, compared with the UTSA's three years, running from discovery or when misappropriation should have been discovered with reasonable diligence. A continuing misappropriation is generally treated as a single claim for purposes of the statute of limitations.

Like the UTSA, the ITSA expressly preserves contractual remedies, whether or not based on misappropriation of a trade secret. The ten-year statute of limitations for written contracts under Illinois law (735 ILCS 5/13-206) governs claims for breach of a writ-

ten confidentiality or non-disclosure agreement rather than the five-year limitations periods for trade secrets claims. Both are longer than in many US jurisdictions.

Identification of Trade Secrets in Pleading and Discovery

Illinois law applies a flexible approach to the level of specificity required when defining asserted trade secrets, tailored to the circumstances of each individual case. Illinois has no statutory identification rule analogous to California's "reasonable particularity" requirement. Cal. Civ Proc. Code § 2019.210; see *Advanced Modular Sputtering, Inc. v Superior Court* (2005) 132 Cal.App.4th 826, 835–36. At the pleading stage, Illinois state courts and the federal courts sitting in Illinois accept general descriptions giving fair notice of the categories of trade secrets at issue. See *AutoMed Techs., Inc. v Eller*, 160 F. Supp. 2d 915, 920–21 (N.D. Ill. 2001). As cases progress to injunctive relief or a trial on damages, courts require greater specificity to test secrecy, value, and misappropriation and to tailor relief. *Composite Marine Propellers, Inc. v Van Der Woude*, 962 F.2d 1263, 1266–67 (7th Cir. 1992). The federal courts sitting in Illinois frequently condition equitable relief on precise identification of the trade secrets. See *Life Spine, Inc. v Aegis Spine, Inc.*, 8 F.4th 531, 538–42 (7th Cir. 2021) (affirming tailored preliminary injunction).

Illinois state court and federal Seventh Circuit decisions do require that plaintiffs separate secret from non-secret matters and identify concrete trade secrets. In *Composite Marine*, the Seventh Circuit rejected "catchall" theories pointing to broad areas of technology hoping "something there" must be secret. 962 F.2d at 1266–67; see also *U.S. Gypsum Co. v LaFarge N. Am., Inc.*, 508 F. Supp. 2d 601, 636 (N.D. Ill. 2007). Illinois state courts follow the same approach, denying relief where a plaintiff's definition of its trade secrets would sweep in public domain features or marketing generalities. See *Elmer Miller, Inc. v Landis*, 253 Ill. App. 3d 129, 134 (1st Dist. 1993).

The Seventh Circuit's recent decision in *NEXT Payment Solutions, Inc. v CLEAResult Consulting, Inc.*, 163 F.4th 1091 (7th Cir. 2026) applies this specificity requirement in the software context. The plaintiff identified 34 software "modules" and several "combinations" in functional terms, such as managing appointment inventory and presenting real-time availability. The Seventh Circuit affirmed summary judgment for the defendant, holding that merely describing what software does is insufficient; instead, as the court explained, a plaintiff must identify how the software achieves the claimed functions so a factfinder can distinguish between what is generally known or readily ascertainable and what derives value from secrecy. Id. at 1096–99. The court suggested that pointing to source code, rules, or algorithms is often the most efficient way to carry that burden, while stopping short of requiring source code disclosure in every case. Id.

Proving Reasonable Measures to Protect Secrecy

Reasonable confidentiality measures remain a separate, essential element that also is evaluated contextually by courts applying Illinois law. *Rockwell Graphic Sys., Inc. v DEV Indus., Inc.*, 925 F.2d 174, 180 (7th Cir. 1991). Robust confidentiality policies, "confidential" stamps or legends on documents, computer user authentication and passwords, need-to-know access restrictions, and vendor and customer non-disclosure agreements are typical evidence of reasonable efforts, but consistent compliance with such protections is important to demonstrate reasonable efforts. *Tax Track Sys. Corp. v New Investor World, Inc.*, 478 F.3d 783, 787–88 (7th Cir. 2007); see *Abrasic 90 Inc. v Weldcote Metals, Inc.*, 364 F. Supp. 3d 888, 898–903 (N.D. Ill. 2019). The Illinois courts' approach to this element is generally in accord with most states, although the extensively developed case law across a broad cross section of business sectors has produced a range of precedents on this issue that are very case-specific and do not provide any bright-line rules.

The Inevitable Disclosure Doctrine

Although Illinois law continues to enforce employee restrictive covenants that are reasonable in scope and satisfy the statutory requirements (as discussed below), Illinois law in appropriate cases allows non-compete-type restrictions to be imposed by injunction even where the employee has no non-compete agreement, at least in exceptional cases. This legal principle was first developed by courts applying Illinois law and is known as the "inevitable disclosure" doctrine because it is premised on the argument that disclosure of trade secrets may be inevitable if an employ-

ee is allowed to accept competitive employment in a highly sensitive role that requires the employee to work directly with the same types of matters they oversaw for the former employer.

The seminal decision on inevitable disclosure is *PepsiCo, Inc. v Redmond*, 54 F.3d 1262 (7th Cir. 1995), which established that misappropriation can be enjoined prospectively by the court – even in the absence of evidence of the employee's actual use or copying of the trade secrets – where the circumstances make future disclosure effectively unavoidable. In *PepsiCo*, a senior executive with knowledge of strategic distribution plans left to join Quaker Oats in a directly competitive role. The Seventh Circuit affirmed an injunction issued by the district court barring him from continuing employment in the competitive role for Quaker, holding that a former employer may obtain relief by showing an employee's new position will "inevitably lead" the employee to use the former employer's trade secrets.

The ITSA expressly permits relief for "threatened" misappropriation (765 ILCS 1065/3 (a)), and Illinois courts continue to apply the doctrine, although cautiously and only in unusual cases where very specific circumstances show a high risk of trade secret misappropriation. *PepsiCo*, 54 F.3d at 1269–71; see *Strata Mktg., Inc. v Murphy*, 317 Ill. App. 3d 1054 (1st Dist. 2000). In *Daniels Midland Co. v Sinele*, 2019 IL App (4th) 180714, the court held the doctrine was inapplicable where the employee's new position was with a customer rather than a competitor, distinguishing between "join[ing] the opposing team" and working for a customer.

Statutory Limitations on Restrictive Covenants Under the Illinois Freedom to Work Act and Illinois Workplace Transparency Act

As noted above, non-compete covenants, non-solicitation covenants, and confidentiality covenants are accepted and important tools for trade secret protection under Illinois law, but Illinois does impose safeguards against oppressive employee covenants.

The Illinois Freedom to Work Act (IFWA), effective 1 January 2022, sets bright-line compensation thresholds limiting who can be bound by non-competition and non-solicitation agreements and codifies core enforceability requirements. The Illinois Workplace Transparency Act (IWTA) separately regulates confidentiality and non-disparagement covenants.

Non-competition and non-solicitation agreements under the IFWA

The IFWA prohibits non-competition covenants for employees earning less than USD75,000 per year and non-solicitation agreements for employees earning less than USD47,500 per year (with periodic adjustment for inflation). 820 ILCS 90/1, et seq. It also voids non-competition covenants for workers covered by a collective bargaining agreement under the Illinois Public Labor Relations Act or Illinois Educational Labor Relations Act and voids non-competition covenants and non-solicitation covenants for (i) workers "employed in construction" and (ii) mental health professionals providing "mental health services to veterans and first responders", with certain limitations. 820 ILCS 90/10.

The IFWA also requires adequate consideration in the form of two years of continued employment, additional financial or professional benefits, or a combination; specific procedural safeguards; and that the covenant is reasonable in scope as defined by judge-made Illinois common law. The IFWA provides one-way fee-shifting in favour of the employee if the employee prevails in litigation. 820 ILCS 90/25. A recent Northern District of Illinois decision awarded fees where the employer voluntarily dismissed a non-solicitation claim after a motion to dismiss, holding the defendants had "prevailed" for IFWA purposes. *Mazzetta Co., LLC v Simpson*, No 1:24 cv-2488, 2025 WL 777534 (N.D. Ill. Mar. 11, 2025).

Illinois differs from many other states by expressly rejecting the majority rule that at-will employment is adequate consideration under the IFWA. Adequate consideration may take the form of (i) two years of continued employment after signing or (ii) additional professional or financial benefits conferred on the employee in exchange for agreeing to the covenant. 820 ILCS 90/5; see also *MSR Tech. Grp., LLC v VistalTech, Inc.*, No 24-CV-03203, 2025 WL 1744730, at *4 (N.D. Ill. Mar. 17, 2025). When an employee receives only their regular wages and does not remain employed for two years, courts find mere continued employment inadequate consideration. See *Titan Sec. Servs., LLC*

v Saylor, No 25 C 1750, 2025 WL 2453805, at *3 (N.D. Ill. Apr. 28, 2025). Because there is no guarantee an employee will remain for at least two or more years, most Illinois employers now provide a signing bonus or other easily quantified additional consideration that is specifically designated as consideration for signing the employee restrictive covenant agreement.

Employment agreements versus sale-of-business covenants under the IFWA

Covenants ancillary to the sale of a business receive different treatment under Illinois law. The IFWA expressly excludes agreements "relating to the purchase and sale of the 'good will' of a business" from the definition of "covenant not to compete", leaving such covenants governed by common law without the IWFA's salary thresholds or procedural protections. Courts afford greater latitude because the seller has received a purchase price for goodwill, but reasonableness is still required. In *Arcor, Inc. v Haas*, 363 Ill. App. 3d 396 (1st Dist. 2005), the court refused to enforce a three-year blanket prohibition on competition without geographic limitation in a sale-of-business covenant, particularly because it restricted the seller from competing "in any capacity" in the relevant industry. In short, sale-of-business covenants must still be reasonable, but the standard generally permits broader scope than employment agreements.

Confidentiality covenants under the IFWA and IWTA

The IFWA draws a sharp statutory line between non-competition restraints and confidentiality covenants. The definition of "covenant not to compete" expressly excludes confidentiality agreements, invention assignment covenants, and agreements prohibiting use or disclosure of trade secrets. 820 ILCS 90/5. That exclusion means NDAs are not subject to the IFWA's earnings thresholds. Still, two constraints matter. First, the ITSA confirms that a contractual duty to maintain secrecy or limit use of a trade secret is enforceable and is not void solely because it lacks a geographic or temporal limit. 765 ILCS 1065/8 (b)(1). Second, courts will not enforce confidentiality provisions drafted so broadly that they function as de facto non-competitions by preventing an employee from using general skill, knowledge, and experience. See *AssuredPartners, Inc. v Schmitt*, 2015 IL App (1st) 141863, ¶¶ 41–45.

The IWTA separately regulates confidentiality and non-disparagement provisions tied to "unlawful employment practices". A confidentiality agreement cannot bar an individual from reporting unlawful conduct to government authorities or from making truthful statements about alleged unlawful employment practices. 820 ILCS 96/1 20, 1 25 (a). Amendments effective 1 January 2026 have expanded the IWTA's reach to encompass any employment law violations enforced by agencies including the Illinois Department of Labor, OSHA, or the NLRB. Employers should ensure that confidentiality covenants expressly exclude claims or information protected by the IWTA.

Enforceability of Reasonable Restrictive Covenants Under Illinois Common Law

Illinois law requires restrictive covenants to be supported by adequate consideration and to constitute only a reasonable restraint on trade. *LKQ Corp. v Rutledge*, 96 F.4th 977, 982 (7th Cir.); *Reliable Fire Equip. Co. v Arredondo*, 2011 IL 111871, ¶ 16.

To be reasonable, restrictive covenants must pass a "three-dimensional rule of reason": (i) no greater than required for the protection of a legitimate business interest; (ii) no undue hardship on the employee; and (iii) not injurious to the public. *Rutledge*, 96 F.4th at 982 (quoting *Reliable Fire*, 2011 IL 111871, ¶ 17). Courts apply this test flexibly, considering the totality of the circumstances including the employee's customer interaction, the near-permanence of customer relationships, the employee's acquisition of confidential information, and time and place restrictions. *Reliable Fire*, 2011 IL 111871, ¶ 43; 802 ILCS 90/7. The covenant must also be "ancillary to a valid employment agreement". 802 ILCS 90/15.

Protecting Customer Relationships Through Restrictive Covenants

Although protection of trade secrets standing alone may be a sufficient business interest to sustain enforcement of an employee restrictive covenant, many Illinois trade secrets disputes also include claims to enforce restrictive covenants to protect customer goodwill. Where the trade secrets sought to be protected are trade secrets about the customer relationship, the two are often closely intertwined.

Illinois has long recognised that employers may have a legitimate interest in protecting customer relationships. See *Morrison Metalweld Process Corp. v Valent*, 97 Ill. App. 3d 373, 376 (1st Dist. 1981). Non-solicitation covenants restrict the employee's contacts with specific customers, while non-competition covenants prevent employees from competing against their former employer generally and, in so doing, taking or threatening to take customer relationships.

Illinois common law differs from many other states, however, by inquiring more critically into the strength and duration of the customer relationships the employer is attempting to protect. Before the Illinois Supreme Court's seminal decision in *Reliable Fire*, some Illinois courts required an employer to demonstrate as an essential showing for enforcement that the customer relationship was "near permanent", but under the multi-factor inquiry adopted by *Reliable Fire*, this is now only one factor to be weighed in context. An employer who asserts that an employee's restrictive covenants are necessary to protect the employer's customer relationships must be prepared to demonstrate specific facts showing the longevity and consistency of those customer relationships, and general assertions of customer goodwill will not suffice. See *Novamed, Inc. v Universal Quality Sols., Inc.*, 2016 IL App (1st) 152673-U, ¶¶ 35–42. Because of this continued emphasis on "near permanence", it is unusual for an employer to rely solely on customer goodwill to justify enforcement of employee restrictive covenants, and as a practical matter, trade secrets and confidential business information will almost always be necessary to enforce a non-compete covenant or a customer non-solicitation covenant. See *Gastroenterology Consultants of North Shore, S.C. v Meiselman*, 2013 IL App (1st) 123692, ¶¶ 10–11.

The departed employee's quality and extent of customer interaction informs enforceability. Courts often find no legitimate interest in preventing solicitation of customers with whom the employee had no contact. See *AssuredPartners*, 2015 IL App (1st) 141863 at ¶¶ 41–42;*Cambridge Eng'g, Inc. v Mercury Partners 90 BI, Inc.*, 378 Ill. App. 3d 437, 455 (1st Dist. 2007). Conversely, courts have upheld non-solicitation covenants limited to customers with whom the defendant interacted directly, while permitting acceptance of unsolicited work when the customer initiates the contact. See *Quality Transportation Servs., Inc. v Mark Thompson Trucking, Inc.*, 2017 IL App (3d) 160761, ¶ 32.

Reasonable limitations on duration and geographic scope are essential for enforceability, though no bright-line rule exists. Courts have upheld five-year non-solicitation covenants where the evidence showed that customer relationships in the industry averaged five years and the covenant was limited to customers with recent business dealings. *Arpac Corp. v Murray*, 226 Ill. App. 3d 65, 76 (1st Dist. 1992). Two-year non-competition and non-solicitation covenants limited to customers the employee had actually served have also been enforced. *Zabaneh Franchises, LLC v Walker*, 2012 IL App (4th) 110215, ¶¶ 16, 21–23;*Arthur J. Gallagher & Co. v Roi*, 2015 IL App (1st) 140786-U, ¶¶ 9, 47, 51;*Appelbaum v Appelbaum*, 355 Ill. App. 3d 926, 930, 942 (1st Dist. 2005). Courts tend to favour enforcement of customer non-solicitation covenants and to approach non-competition covenants with greater scepticism as disfavoured blanket prohibitions on all competitive activity. *Maximum Indep. Brokerage, LLC v Smith*, 218 F. Supp. 3d 630, 638 (N.D. Ill. 2016).

Reforming and Modifying Restrictive Covenants

Illinois law permits courts to modify or "blue pencil" overbroad restrictive covenants rather than void them entirely. *House of Vision, Inc. v Hiyane*, 37 Ill. 2d 32 (1967). The 2022 IFWA amendments codified this power, authorising courts to reform or sever provisions based on factors including the fairness of the restraints, whether they reflect a good-faith effort to protect legitimate interests, the extent of reformation needed, and whether the agreement authorises modification. Courts have the discretion to refuse to blue pencil covenants that are facially overbroad or that would require essentially rewriting the agreement. Notably, Illinois law affords the court the discretion to reform a covenant by re-writing it or by supplying missing terms, in contrast to some states that only allow the striking out of words or phrases and prohibit any additions to the text of the covenant. This flexibility may be a substantial benefit for the employer by allowing the court to grant injunctive relief that is tailored to the particular circumstances of the dispute before the court, rather than throwing out entirely a covenant simply because it is overbroad as drafted.

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