종업원의 경쟁업체 전직으로 영업비밀의 Inevitable Disclosure + 사용자의 영업비밀 보호 위한 전직금지청구 vs 근로자의 전직의 자유, 직업선택권의 충돌 - 미국 영업비밀보호법 실무 Injunctions Under the DTSA § 1836(b)(3)(A)(i)(1)(I)

Limitation on Employment Injunctions Under DTSA § 1836(b)(3)(A)(i)(1)(I)

(1) Remedies. In a civil action brought under this subsection with respect to the misappropriation of a trade secret, a court may—

(A) grant an injunction (i) to prevent any actual or **threatened misappropriation** described in paragraph (1) on such terms as the court deems reasonable, provided the order does not (I) prevent a person from entering into an employment relationship, and that conditions placed on such employment shall be based on evidence of threatened misappropriation and not merely on the information the person knows; or (II) otherwise

conflict with an applicable State law prohibiting restraints on the practice of a lawful profession, trade, or business.

An injunction under the DTSA cannot "prevent" a person from taking new employment and must be based on evidence of "threatened" misappropriation. If an injunction limits someone's new employment, this requires "evidence of threatened misappropriation," not merely evidence that the employee "knows" trade secrets. This means a court cannot say to a departing employee "you cannot ever work at Company X, under any circumstances." But a court can place restrictions on employment, like ordering the employee to wait a few months until a particular deal is over or prohibit the employee from working on a specific project, but only so long as the plaintiff brings forward evidence of a "threat" that the employee will use or disclose the trade secrets. The naked argument that the employee knows and will "inevitably" use or disclose the information in a new job should not be enough.

Much Ado About § 1836(b)(3)(A)(i)(1)(I) - "many of these 'inevitable disclosure' injunctions were entered **only after** a showing that the employee has engaged in "**bad acts**" found

to threaten misappropriation of trade secrets."

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