

# **“Garden Leaves” and Other Strategies to Protect Trade Secrets When Losing Employees**

March 28, 2013

The webinar will begin shortly. The slides and a link to a recording will be sent to you after the event.

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# The Problem

- There is tremendous uncertainty about the enforcement of non-compete clauses in employment agreements
  - Life after *Arthur Anderson*
  - What about other jurisdictions? E.g., bill proposed in the Illinois General Assembly on March 19, 2013
- But employers still need to protect confidential information

# The Opportunity

Garden Leave  
*may* be a solution

# What is Garden Leave

- Paying employees to sit on the sidelines for a brief period of time, such as three months or less.
- During this period, the soon-to-be former employee remains on the payroll, collects a salary and benefits, and owes a duty of undivided loyalty to the current employer.

# When to Raise Garden Leave?

# Current State of the Law

- Courts that have addressed Garden Leave:
  - New York
  - Delaware
  - Minnesota
  - Massachusetts

# Why Courts Enforce Garden Leave



# Benefits of Garden Leave

- Optics
- Smooth transition
- Only enforced if necessary
- Protects against misappropriation
- Employee receives salary and benefits

# Practical Considerations

- Costs
- Duration
- Employee requirements/restrictions

# Essential Elements of Properly Drafted Garden Leave Agreement

# Q & A

## Contacts

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