

# The Importance of Confidential Information in the Life Sciences Industry

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November 21, 2024 Martin Florman, Paul Tobin, Daniel Dubyak

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**PRACTICES** Healthcare and Life Sciences, Life Sciences

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Protection of confidential information is a requirement when running a life science business. However, many owners of new and existing life science businesses often operate without adequately protecting their business's intellectual property and other confidential information. What follows are a few key issues and considerations that life science business owners should consider regarding confidentiality of their business's intellectual property and other confidential information.

- 1. Confidentiality Agreements.** A confidentiality agreement sets out an agreement between the parties to protect private non-public information disclosed during a business relationship. A confidentiality agreement may be unilateral or mutual; however, the type of confidentiality agreement will be determined on the type of business relationship between the parties. Further, some confidentiality agreements include an expiration term when they should not (see Item 3 below). Many life science business owners use a template confidentiality agreement and/or non-disclosure agreement that they pulled off the Internet. Consequently, such life science business owners run the risk of not having the correct type of confidentiality agreement and/or a confidentiality agreement that is tailored correctly to protect the type of confidential information being disclosed.
- 2. Employee Proprietary Information and Inventions Assignment Agreement.** An Employee Proprietary Information and Inventions Assignment Agreement (EPIIAA) is a contract between an employer and an employee that requires the employee to keep the employer's proprietary information confidential and assign any inventions they create to the employer. Under an EPIIAA, employees must keep the employer's non-public and proprietary information confidential and are required to assign any inventions they create, discover, develop, or invent while employed with the company to the employer; this includes inventions created on or off the job, and inventions relating to the company's business. Without an EPIIAA, life science business owners expose their business to unnecessary risks regarding protection of confidential information and ownership of its intellectual property.
- 3. Confidentiality Provisions in Agreements.** Once parties have established a business relationship, confidentiality provisions are often negotiated and incorporated into the relevant agreements. Each confidentiality provision in every agreement should be analyzed carefully to ensure that your life science business is protected. Many life science business owners do not have adequate confidentiality provisions in their life science businesses' agreements. This includes, but is not limited to, some confidentiality provisions having an expiration term when they should not. This often depends on: (i) the type of confidential information being disclosed, (ii) the relationship between the parties, and (iii) the purpose of the disclosure of confidential information (this also applies to confidentiality agreements—Item 1 above).

This list only covers a few of the key issues and considerations. The solution to some of these issues may be as simple as adding an appropriate confidentiality provision to an existing agreement, however, many of the above issues require further action to adequately protect your life science business's confidential information.