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**Tricks and Treats:
Real Life Legal Nightmares**

Presented by: Allen Hutson

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Allen L. Hutson

- Member of the Labor & Employment Practice Group
- Trial lawyer and litigator in the firm's Oklahoma City office.
- *Subsequent information should not be understood as, or considered a substitute for, specific legal advice. For inquiries, please contact Allen L. Hutson, or another licensed attorney.

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Learning Objectives

- Best Practices to protect trade secrets and other confidential business information
- Best Practices for conducting background checks and potential pitfalls
- Sensitive issues surrounding LGBTQ+ individuals in the workplace

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Trade Secrets

- Under Oklahoma law, a trade secret is information, including a formula, pattern, compilation, program, device, method, technique or process that:
 - a. derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and
 - b. is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.



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Is it really a “trade secret?”

- Factors analyzed to determine what constitutes a trade secret under Oklahoma law include:
 - (1) the extent to which the information is known outside of the business;
 - (2) the extent to which the information is known by employees and others involved in the business;
 - (3) the extent of measures taken by the business to guard the secrecy of the information;
 - (4) the value of the information to the business and to competitors;
 - (5) the amount of effort or money expended by the business in developing the information; and
 - (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

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Reasonable Efforts to Maintain Secrecy

- Handbook policies outlining how to treat confidential and proprietary information accompanied by handbook acknowledgments.
- Use of non-disclosure and confidentiality agreements.
- Password protection on company devices. Additionally, access to trade secret information should be limited to certain individuals.
- Monitoring procedures to analyze employees' use of trade secret information and understanding of confidentiality obligations.

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Reasonable Efforts to Maintain Secrecy

- Monitoring an employees' access in preparation of termination and procedures for restricting an employees' access following termination.
- Efforts to retrieve any trade secrets you believe may have been wrongfully procured by an employee as soon as practicable.
- Labeling documents as confidential and/or trade secret.



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Common Mistakes Employers Make

- Relying on industry experience/ assuming an employee understands their confidentiality
- Lack of follow-up to ensure confidentiality agreements have been signed.
- Widely sharing confidential documents within the company.



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Background & Reference Checks



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Criminal Background Checks

- Criminal background checks assists employers in determining an applicant's criminal convictions, motor vehicle violations, and misrepresentation regarding education or work history.
- Reasons for background checks:
 - Safety concerns
 - Data verification
 - Establishes an employer's due care in the hiring process

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Background & Reference Checks

Be careful when doing background and reference checks.

- Obtain a broad authorization before conducting reference checks
- Request a waiver from an applicant that releases former employers and the requesting employer from any claims relating to the reference check.
- Request basic information

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Background Checks (cont.)

- Must ensure that if your company performs pre-employment background checks on some employees, it must perform them on all employees.
- Must monitor your background check decisions as the EEOC has taken the position that company-wide rules against hiring people with any felony conviction has an adverse impact on minorities.

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Supporting LGBTQ+ Employees at Work

- Companies have progressed over the last few years in making a bigger effort in diversity and inclusion efforts. However, there is always more room for progress.
- Employers should consider sensitivity training regarding using proper pronouns and terminology, avoiding outing employees at work, and bathroom usage for transgender individuals.



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What Not to Do: Out of Work Conduct


- There has been substantial political controversy in media and politics surrounding transgender rights which often leads employees to share their views online.
- Employees must understand they can be subject to discipline for sharing hateful and discriminatory rhetoric online. The First Amendment (Freedom of Speech) does not provide an excuse for employees working for private employers.








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 **Contact**
Allen L. Hutson
405.234.3206
allen.hutson@crowedunlevy.com
crowedunlevy.com

 Oklahoma City Braniff Building 324 North Robinson Ave. 405.235.7700	 Tulsa 222 N. Detroit Ave. Suite 600 918.592.9800	 Dallas 2525 McKinnon Street Suite 425 214.420.2163	 Houston 3663 N. Sam Houston Parkway East, Suite 628
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