



## WHAT EVERY INDUSTRIAL CHEMIST SHOULD KNOW: ETHICS AND LEGAL CONSIDERATIONS

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### What are common sections in an employee agreement for scientists in industry?

Typical sections include confidentiality and non-disclosure agreements (NDAs), inventions and IP assignment clauses, non-compete provisions, and other legal terms. These agreements often require prompt disclosure of inventions, assignment of inventions to the company, and restrictions on outside work that could conflict with the employer's interests.

### What are "trade secrets" and what are the two criteria listed for them?

Trade secrets are confidential information that gives a business a competitive edge and is actively protected. The two key criteria for something to be a trade secret are:

- (1) having economic value in not being known
- (2) being subject to reasonable efforts to maintain secrecy.

### How long do confidentiality and non-disclosure obligations typically last, and what are the implications of trade secrets?

Confidentiality and non-disclosure obligations can extend beyond the duration of employment, often in perpetuity, especially for trade secrets. Trade secrets are a special category of IP that require a high level of security and protection. The obligation to protect trade secrets extends beyond employment and is maintained indefinitely, so long as the information remains a trade secret. Even if a non-compete is not in effect, trade secrets are still covered.

### What are some potential penalties for violating conflict of interest policies or misappropriating trade secrets?

Violations can lead to loss of employment, monetary penalties, and even criminal prosecution, especially in cases of trade secret theft. Companies and law enforcement take these matters very seriously, as illustrated by examples of former employees facing imprisonment for stealing trade secrets.

### What is a non-compete agreement and what is the evolving nature of enforcement?

A non-compete agreement restricts an employee from working for a competitor for a certain period after leaving a company. The FTC ban on most non-competes has been paused due to a lawsuit, and state laws are subject to change so it remains an evolving area.

### What are the key differences in expectations between academic and industrial chemistry careers concerning Intellectual Property (IP) and publication?

In academia, researchers typically have greater latitude in their research area and may share revenue or access to IP. Publication is encouraged with significant freedom. In industry, research areas are driven by business needs, IP is generally assigned to the employer, and publication requires review and approval, potentially being delayed for patent or business reasons.

### What are the different types of intellectual property?

The different types of intellectual property are patents (utility, design, and plant), trade secrets, trademarks, copyrights, and data rights. Each provides different means of protecting inventions, brands, creative works, and valuable information.

### What should industrial chemists do to ensure they are acting ethically and legally in their roles?

Chemists should thoroughly understand their employment agreements, company policies regarding confidential information and trade secrets, and obligations for internal and external disclosures. They should communicate openly with their supervisors about potential conflicts of interest and adhere to professional standards and legal compliance requirements. Actively engage with the resources offered by the ACS Ethics Committee and the Division of Chemistry and the Law (CHAL).

**What obligations beyond confidentiality, non-disclosure and non-compete should industrial chemists be aware of?** Industrial chemists should be aware of obligations such as professionalism and legal compliance, periodic training and certification of compliance, safety and environmental compliance, and cybersecurity. They should also be familiar with whistleblower provisions and the importance of reporting unethical or illegal activities.

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### GLOSSARY OF KEY TERMS

- **Confidential Information:** Proprietary data, knowledge, or information belonging to a company that is not publicly available and is essential to its business operations and competitive advantage.
- **Conflict of Interest:** A situation in which an individual's personal interests or obligations could compromise their judgment, loyalty, or actions in their professional role.
- **Copyright:** A legal right granted to the creator of original works of authorship, including literary, dramatic, musical, and certain other intellectual works.
- **Data Rights:** Emerging rights related to the control and use of data, which may include protection for data sets, algorithms, and other data-related assets.
- **Intellectual Property (IP):** Intangible assets, such as patents, trademarks, copyrights, and trade secrets, that are legally protected from unauthorized use or infringement.
- **Non-Compete Agreement:** A contractual agreement that restricts an employee from working for a competitor for a specified period after leaving a company.
- **Patent:** A legal right granted for an invention, allowing the patent holder to exclude others from making, using, or selling the invention for a specified period.
- **Trade Dress:** The aesthetic or ornamental design of a product that is used to identify and distinguish it from competitors.
- **Trade Secret:** Confidential information that gives a business a competitive edge and is actively protected from disclosure.
- **Trademark:** A symbol, design, or phrase legally registered to represent a company or product.
- **Utility Patent:** Protects the functional aspects of an invention, covering how it works or is used.
- **Design Patent:** Protects the ornamental design of an article of manufacture.

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