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In Brief

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Stopping a Former Employee From Using Trade Secrets? Prove Your Harm.

Massachusetts' highest court ruled last month that a company suing a former employee for taking trade secrets cannot get a quick court order blocking that employee from competing unless it proves the type of harm that a money judgment will not fix. The Supreme Judicial Court made this ruling in *Daikin Applied Americas Inc. v. Russo*. Before this decision, some federal courts treated a strong trade secret claim as enough. The SJC rejected that approach. A company must now show upfront real evidence of the harm it faces.

Daikin, an HVAC company, sued two former employees and the new company they formed, RPAC LLC. Daikin alleged that the employees emailed confidential information to their personal accounts while still employed. It further alleged that they used that information to compete for Daikin's customers after they left.

At the hearing on its request for a preliminary injunction, the defendants agreed to return any confidential information and not to use it. Daikin still asked the court to bar the defendants from soliciting 75 of its customers for one year. Daikin argued that because it could show a likelihood of success at trial, the court should presume it would suffer irreparable harm if the defendants were not stopped right away. The trial court denied Daikin's request, and the SJC agreed.

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FIRM NEWS

Matthew Kane

Payal Salsburg

Matt Kane and Payal Salsburg were named to the 2027 *Lawdragon 500 Leading Litigators in America*, recognizing accomplished trial lawyers nationally.

Matt and Payal co-authored a chapter, "Documentary Evidence" for Massachusetts Continuing Legal Education's (MCLE) *Massachusetts Evidence: A Courtroom Reference Guide.*

Four of Smith Kane's attorneys are included in *The Best Lawyers in America*® 2027 edition:

Mark Smith

Mark Smith: Criminal Defense, White-Collar; Commercial Litigation; Closely Held Companies and Family Businesses Law

Matt Kane: Litigation - Labor & Employment

Payal Salsburg: Commercial Litigation; Criminal Defense, White-Collar

Melissa King

Melissa King was named to *The Best Lawyers in America® Ones to Watch®* list for Commercial Litigation

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The SJC explained that a preliminary injunction is an extraordinary remedy and that the trade secrets law directs courts to apply principles of equity. Presuming harm, rather than requiring proof, departs from those principles. The SJC pointed to U.S. Supreme Court decisions rejecting similar presumptions in patent and copyright cases. Some federal judges in Massachusetts had applied that presumption in trade secret cases. The SJC said it was unpersuaded by any decision that relied solely on a presumption.

Employers should not expect only a strong trade secret claim to win a quick early injunction.

Daikin also failed to show the kind of irreparable harm typically required by courts to enter a preliminary injunction. Financial losses can ordinarily be recovered through money damages. The exception is harm that threatens the very existence of a business. Daikin argued that it would lose customer goodwill, but it offered no evidence of that. The court found that lost equipment sales and maintenance contracts were quantifiable. The only affidavit Daikin submitted did not support the claim that it would lose goodwill over and above its financial losses.

The SJC's October 2026 decision has limits. The court agreed with the denial of a preliminary injunction, but it did not hold that trade secret plaintiffs can never obtain early relief. The motion judge also noted there

were real disputes over whether Daikin's information was confidential and whether Daikin adequately protected it. The judge observed that Daikin had no non-solicitation or non-compete agreements with the former employees.

Here is what this means for employers and employees. Employers should not expect a strong trade secret claim to win a quick early injunction. They should work with counsel to build the record early, with sworn evidence of harm that money cannot compensate for, such as lost goodwill or damaged customer relationships. Employers should use non-solicitation agreements where appropriate, because trade secret law will not fill that gap. They should also act quickly to secure the return of company information. Executives and other departing employees should not read this ruling as permission to take information. It addressed only the request for an early court order. The lawsuit continues, and employees can still face damages claims. They should not forward company files to personal accounts, which is the conduct that led to the Daikin lawsuit. Before leaving, they should review any non-solicitation or non-compete agreement they signed.

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