CASE How Special Is That Sandwich?

Companies have every right to protect their intellectual property and trade secrets. In fact, they have a responsibility to shareholders to do so because this proprietary information is often the source of competitive advantage. Careful safeguarding of secrets is an important part of ensuring the sustainability of the firm.

But what exactly qualifies as a trade secret? For instance, one fast food company advertises its "secret sauce," and a producer of baked beans' "secret family recipe" has been widely featured in its television commercials. Would anyone argue that the search algorithm developed and used by Google is a trade secret? Probably not. Trade secrets are pretty broadly defined and can include things like customer lists, recipes, formulas, and software. So, is a sandwich recipe a trade secret? Jimmy John's management certainly thinks so. The recipe consisting of a quarter pound of roast beef with provolone cheese on a pita is a trade secret in the company's eyes.

The New Jersey–based sandwich company requires all of its workers—including entry-level workers who are earning starting wages—to sign a stringent "noncompetition" clause as part of the hiring process. When employees sign the agreement, they agree not to work "at any business which derives more than 10% of its revenue from selling submarine, hero-type, deli-style, pita and/or wrapped or rolled sandwiches." That would seem to cover an awful lot of establishments, from direct competitors in the food industry to the gas stations, convenience stores, and the neighborhood hospital cafeteria.

Former employees are prohibited from working in such a place for two years after they leave Jimmy John's employment. The geographic limit is set at three miles of either the Jimmy John's location where the individual previously worked or any other Jimmy John's shop (there are 2,000 U.S. store locations). That's a fairly broad swath of geography. Because Jimmy John's operates in 43 states, it is difficult to state without exception that the noncompete clause would not be upheld in a court proceeding. However, most legal experts believe that it is overly broad and the company would be unlikely to prevail in a lawsuit. It hasn't been tested in court yet.

Why would a company implement and require such a tough restriction on low-wage workers? That is anybody's guess, and the company's management wouldn't respond to reporters who uncovered the story. So, we can only speculate on why such a policy exists. Lawmakers have become interested in the case because it appears to almost border on intimidation and bullying of workers. Companies are certainly free to set policies and practices to protect legitimate business concerns. But it seems to be a stretch to consider meat, cheese, and bread as anything special that needs the special protection of a noncompete agreement.[72]

QUESTIONS

1. Based on your understanding of this case, what possible reasons could Jimmy John's management have for adopting this policy? If you were the HR manager at Jimmy John's, what pros and cons would you point out to management in terms of the effect of having this policy?
2. If you were an entry-level worker at Jimmy John's, how would the requirement to sign a noncompete agreement influence your opinion of the company? What likely steps might you take when you leave employment there?