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# Defend Trade Secrets Act (DTSA) Signed Into Law: Federal Law Offers Greater Protections And New Obligations For Employers

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On Wednesday, May 11, 2016, President Obama signed the Defend Trade Secrets Act ("DTSA") into law, a first step in creating federal oversight of trade secrets laws, which have been exclusively handled at the state level. The DTSA does not preempt existing state laws, but is an additional tool to protect employers with trade secrets related to products or services used in interstate or foreign commerce.

**DTSA Protections**

Employers threatened by trade secret misappropriation from competitors or employees can now:

- File a civil action in Federal Court for trade secret misappropriation (the DTSA also includes potentially new protections for party filings and even court proceedings/rulings related to trade secrets to be sealed). This will also have the effect of allowing associated breach of contract and employment law claims to be heard in Federal Court;
- Seek actual damages or restitution for unjust enforcement due to misappropriation of trade secrets;
- Seek attorneys' fees and exemplary damages of up to twice the amount of actual damages or restitution if the misappropriation is wilful and malicious (note that the DTSA also provides for attorneys' fees to a defendant if claim is asserted in bad faith);
- Obtain a full range of injunctive relief (note that the DTSA excludes injunctive relief restraining an employee from working for a competitor or relief that conflicts with state laws imposing restraints on trade);
  In extraordinary circumstances, obtain a civil seizure order on an ex parte basis to prevent dissemination of a trade secret;
- Obtain penalties for criminal violation of $5 million or three times the value of the misappropriated trade secrets;
- Continue to obtain existing remedies under state trade secrets laws.

**Whistle Blower Immunity - Notice Requirement**

The DTSA also provides for immunity from liability for disclosure to the government or to an attorney for the purpose of reporting or investigating a suspected violation of a law. The immunity also extends to an employee who files a lawsuit against an employer for retaliation for whistleblowing. The employee may

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disclose the trade secret for the legal proceeding, provided court records are filed under seal.

*The DTSA requires that employers notify employees and independent contractors about this immunity*. Under the DTSA, employers are required to provide the immunity notice in any contracts with employees and independent contractors that address the use of trade secrets. Alternatively, the DTSA provides a less burdensome option, allowing employers to provide the notice via reference to a policy document. Employers that do not provide the required notice lose the right to two of the most useful remedies in the new law: exemplary damages and attorneys' fees against an employee who was not provided with such notice.

The notice provision applies to all contracts and agreements entered into or updated after the date of enactment (May 11). Therefore we recommend that employers take immediate steps to add the special "immunity notice" clause to all employee and independent contractor agreements dealing with confidential information, as well as in employee policies addressing trade secrets.

If you have any questions about the DTSA, trade secret protection, or need assistance complying with the new regulation, please contact Ben Hodges at Foster Pepper.

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