

LEGAL UPDATES

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New Federal Trade Secrets Law Provides Strong, Uniform Protections

President Barack Obama signed into law the Defend Trade Secrets Act (DTSA) on May 11, 2016. The legislation, which passed with overwhelming congressional support, allows companies to file civil lawsuits for trade secret misappropriation under *federal* law. This option, previously unavailable, represents a seismic shift in American trade secrets litigation.

Key Provisions of the New Legislation

Prior to DTSA, the only option for victims of trade secret theft under federal law was for the Department of Justice to file a criminal case. Companies could seek civil remedies only through various state laws marked by inconsistent application, diverse statutes of limitation and varying availability of remedies.

The DTSA provides easier access to federal courts, which are more equipped to handle the interstate, international and highly technical issues relevant to many trade secrets cases. The DTSA is not applied retroactively; it applies only to misappropriations that occur on or after May 11, 2016. Further, the new legislation will result in a more uniform body of trade secrets law, leading to greater predictability for all litigants. State law remedies will remain available, as the DTSA expressly does not preempt the state statutes.

The DTSA provides for a variety of remedies, including compensatory and punitive damages, attorneys' fees and various injunctive relief. Notably, the law seeks to prevent injunctions that would unfairly limit employee mobility. But perhaps the most controversial remedy is the availability of *ex parte* seizure orders. Under "extraordinary circumstances," a company may seek seizure of certain property, without notice, if necessary to prevent the dissemination of a stolen trade secret. However, wrongful or excessive seizures could lead to the recovery of damages or attorneys' fees if a party is wrongfully injured by the seizure.

Finally, the DTSA's whistleblower protection and notice provisions limit civil and criminal liability for whistleblowers who disclose trade secrets in the course of reporting suspected violations of a law. To qualify for punitive damages and attorneys' fees in trade secret lawsuits against former employees or contractors, companies must have provided notice of this whistleblower immunity to individuals signing nondisclosure agreements, confidentiality agreements or other employment agreements that include these types of confidentiality provisions.

What This Means to You

Companies contemplating the initiation of trade secrets litigation should consider the new federal option found in the DTSA. Even companies that are not currently involved in trade secrets disputes should pay immediate attention to the DTSA's notice provision. To best protect their interests, employers should review and modify their confidentiality and nondisclosure agreements for compliance with the DTSA.

Contact Us

For more information on how the DTSA may impact your company's employment agreement practices or anticipated litigation, contact Randy Thompson, Brian Stair, another member of Husch Blackwell's Labor & Employment team or Joan Archer, member of the Trade Secret & Business Information Protection team.