

New Federal Trade Secrets Law Passed – Major Implications for Trade Secret Owners and Their Employees

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Congress just passed a major revision to U.S. trade secrets law, with enactment upon the President's signature likely in early May. Entitled the Defend Trade Secrets Act of 2016 ("DTSA"), the legislation creates for the first time a Federal private, civil cause of action to protect trade secrets. The Act is enforceable in Federal courts, but maintains existing state systems.

In modernizing trade secret law, this legislation recognizes the important and growing role of trade secrets throughout the U.S. economy. Since trade secrets implicate almost every industry sector, the law creates a very valuable tool to protect this growing area of IP, while implicitly recognizing the increased challenges in enforcing patents and the difficulties in utilizing traditional state-based systems. By now providing civil remedies for misappropriation, it also builds on and extends the criminal penalties provisions of its predecessor Economic Espionage Act.

Seizure Provisions Related to Stolen Trade Secrets

Most significantly, the legislation provides for *ex parte* civil seizure of stolen trade secrets, as well as both injunction relief and damages as additional remedies. The rigorous seizure provisions are tempered by requiring a showing of "extraordinary circumstances," including demonstrating that no other equitable remedy exists, that the target has actual possession of the trade secret, and that it is in danger of being destroyed or removed. Injunctive relief tracks injunction law requirements generally.

Impact on Employment Law

Two provisions of the Act directly affect employers and confidentiality agreements:

1. Injunctions to prevent misappropriation are generally not available to prevent a person from changing employers when they are taking "merely the information the person knows"; and

2. The requirement that all employment agreements and policy documents containing confidentiality provisions contain notice that the employee has immunity from criminal and civil liability for disclosure of trade secrets and confidential information that is made in confidence to a Federal, State or local government or to an attorney and solely for the purpose of reporting or investigating a suspected violation of law; or is made in a complaint or other document filed in a lawsuit if filed under seal.

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