

Defend Trade Secrets Act Contains New Immunity Notification Requirements for Employers

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The new Defend Trade Secrets Act (DTSA), signed into law by President Obama on May 11, 2016, creates a new private civil cause of action in federal court for trade secret misappropriation. Prior to the DTSA, trade secret misappropriation claims were almost always governed by state law, with most states having adopted the Uniform Trade Secrets Act (UTSA). The DTSA does not preempt existing state law but instead creates a uniform federal law that, among other things, will allow trade secret misappropriation claims to be filed in federal court. A more detailed description of the DTSA can be found [here](#), but employers need to be aware of at least one feature of the DTSA.

The DTSA creates statutory protections that provide for civil and criminal immunity for employees (or contractors or consultants for an employer) who disclose trade secrets in three situations: (1) where the employee discloses trade secrets in confidence to a local, state or government official or to an attorney for the purpose of reporting or investigating a suspected violation of law; (2) where the disclosure is made in a sealed filing in a lawsuit or other proceeding; and (3) where the employee discloses the trade secret to the employee's attorney in the course of pursuing a lawsuit where the employee alleges retaliation for reporting a suspected violation of the law.

Employers must now notify employees who are bound by agreements and contracts dealing with the use of trade secrets or other confidential information about the immunity provisions discussed above. Employers have the option of inserting the notification language directly into their employment agreements, or they may provide the notification in a separate policy document that is cross-referenced in the employment agreement. The notice requirement applies only to agreements that are entered into or updated after May 12, 2016. The penalty for failing to comply with the notice requirement is that the employer will not be allowed to recover exemplary damages or attorney fees in an action under the DTSA against an employee who did not receive the notice.

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