

May 2016

## President Obama Signs Law Providing Federal Trade Secret Protections

On May 11, 2016, President Barack Obama signed the Defend Trade Secrets Act of 2016 (DTSA), providing a federal civil cause of action for the misappropriation of trade secrets under the Economic Espionage Act. Both the Senate and House of Representatives passed the [DTSA](#) with near unanimous support in April.

For companies with trade secrets “related to a product or service used in, or intended for use in, interstate or foreign commerce,” the DTSA provides the following important provisions, among others:

- **Federal Civil Action.** The DTSA creates a federal civil cause of action, giving original jurisdiction to the United States District Courts. Because the DTSA does not supersede state trade secret laws, companies have the option to bring claims in federal or state court.
- **Seizure of Property.** The DTSA permits a court to issue an order, upon *ex parte* application in “extraordinary circumstances,” to seize property to protect against improper dissemination of trade secrets. If granted, the court is required to schedule a seizure hearing, and the moving party will be required to provide security in an amount to be determined by the court for the payment of any possible damages suffered as the result of a wrongful or excessive seizure.
- **Damages and Attorney’s Fees.** In addition to the seizure of property and injunctive relief, the DTSA permits recovery of damages for actual losses and unjust enrichment, and allows for exemplary (double) damages when trade secrets are “willfully or maliciously misappropriated.” The DTSA also provides for recovery of reasonable attorney’s fees in limited instances, including if the court determines that the claims of misappropriation were brought in bad faith.
- **Whistleblower Protections and Notice Requirement.** The DTSA further includes civil and criminal immunity under federal and state trade secret laws for any disclosures made to a governmental agency for the purpose of reporting or investigating a legal violation or when filed in a lawsuit if such filing is made under seal. The DTSA also requires that an employer provide notice of these protections in any employment agreement governing confidential information or provide a cross-referenced policy document setting forth the employer’s reporting policy. Failure to comply with the notice requirement prohibits recovery of exemplary damages and attorney’s fees under the DTSA.

Moving forward, the DTSA provides companies with a new avenue to address a wide range of trade secret issues. In light of the notice requirement contained in the DTSA, employers may wish to review their confidentiality agreements, procedures, and policies to determine how best to navigate the new law.

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For more information or if you have questions about how the issues raised in this legal update affect your policies, practices, or other compliance efforts, please contact one of the following lawyers in the firm's [Labor, Employment, Benefits + Immigration Group](#).

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