

NEW FEDERAL LAW PROTECTIONS TO KEEP EMPLOYEES FROM STEALING YOUR MOST VALUABLE BUSINESS ASSETS

On May 11, 2016, President Obama signed the Defend Trade Secrets Act (the “DTSA”) into law. This created a new body of federal trade secret law that gives trade secret holders the right to sue for trade secret misappropriation in federal court. Trade secret holders still enjoy the protections afforded by existing state laws, such as the California Uniform Trade Secret Act, which means trade secret holders now have the option of seeking the protection of either federal or state trade secret laws.

- **Effective date:** The DTSA's effective date is May 11, 2016, and it applies only to misappropriation occurring on or after the effective date. The DTSA will not help employers whose trade secrets were misappropriated prior to May 11, 2016.
- **Seizure of trade secrets without notice:** The DTSA gives trade secret holders a powerful tool not available under state trade secret law. It authorizes the court to seize and retain any property necessary to protect the trade secrets at issue, without notice to the opposing party.
- **Punitive Damages and Attorneys’ Fees:** An employer who prevails in a DTSA lawsuit may recover punitive damages and attorneys’ fees from an employee who willfully and maliciously misappropriates trade secrets.
- **Whistleblower immunity:** The DTSA protects whistleblowers who either (1) disclose trade secrets to government officials or attorneys “solely for the purpose of reporting or investigating a suspected violation of law,” or (2) disclose trade secrets in a complaint or other court filing that is filed under seal. It also allows an employee or contractor who files a lawsuit claiming that an employer retaliated against the employee or contractor for reporting a suspected violation of law to disclose the trade secret under limited circumstances.
- **Notice provisions and effect on available remedies:** Employers must notify employees and contractors of the DTSA's whistleblower immunity. This may be done by contract, such as an employment agreement or non-disclosure agreement, or by reference to a trade secret policy containing the notice provision. If they fail to do so, they cannot recover attorneys’ fees or punitive damages in a lawsuit under the DTSA from any employee or contractor who was not notified.

What this means for California employers:

- California employers now enjoy the protection of both the DTSA and the California Uniform Trade Secrets Act

- You should amend and update your employment and independent contractor agreements, including nondisclosure agreements, trade secret policies, and any other document concerning the treatment of trade secrets, to satisfy the notice provisions of the DTSA. You cannot recover attorneys' fees or punitive damages in a DTSA lawsuit without satisfying the new notice provisions. You should also ensure that your existing employees and contractors sign to acknowledge and accept the updated policies.

Protecting Your Trade Secrets to Avoid Misappropriation. While the DTSA provides a new vehicle for employers to pursue their rights, litigation is typically a last and undesirable resort. Your higher priority should be to prevent your trade secrets from being compromised. For more information on ways to protect your trade secrets and conducting trade secret audits, click **here**.

The Fine Print.

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