

New Federal Law Means You Should Update Your Non-Compete And Non-Disclosure Agreements

President Obama this week (on May 11) signed into law the Defend Trade Secrets Act (DTSA) of 2016. This is truly a landmark law; one that expands the federal remedies companies can pursue to halt the theft of trade secrets vital to a company's operation and financial security. DTSA received unprecedented bipartisan support, with passage by 87-0 in the Senate, 410-2 in the House of Representatives.

This new law recognizes the vital role that trade secrets play in generating billions of dollars in annual revenues and millions of jobs as a key component of our national - and local - economy. It also comes in response to several high profile cases which demonstrate how vulnerable U.S. companies are from internal and external cyber-threats.

A trade secret is anything which gives a company a competitive advantage and is kept confidential, including a design, formula, manufacturing process, financial data, or customer information. Prior to DTSA, trade secrets did not receive the same protections afforded to other forms of intellectual property such as trademarks, copyrights, and patents.

DTSA provides the first ever federal civil statutory remedies for theft of trade secrets. These remedies exceed those which may have been previously available under state law, including aggressive ex parte seizure mechanisms similar to those used to seize counterfeit goods under trademark law, exemplary damages, and attorney fees.

There is a caveat: imbedded within the text of DTSA is a warning that if you fail to include whistleblower immunity notice in any agreement with an employee that governs the use of a trade secret or other confidential information you will not be able to take advantage of the exemplary damages and attorney fees available under DTSA.

This notice must inform the employee, among other things, that he or she cannot be held liable under any trade secret law for the disclosure of a trade secret that is made (1) in confidence to a government official or to an attorney for the sole purpose of reporting a suspected violation of law or (2) in a document in a lawsuit or proceeding filed under seal.

Non-compete and non-disclosure agreements play a key role in protecting a company's trade secrets. The law governing the enforceability of these agreements is constantly changing. Failure to revise these agreements periodically could have disastrous consequences. The passage of DTSA provides yet another reason why you need to review and revise your agreements to maximize the protections available. A simple and cost effective way to have your agreements reviewed, along with your physical and digital security measures, is through Bond Schoeneck & King's innovative [Trade Secret Protection Audit](#).

To learn more, contact [Bradley A. Hoppe](#) (716.416.7025; bhoppe@bsk.com) or [Heath J. Szymczak](#) (716.416.7057; hszymczak@bsk.com).



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