

Insights

Defend Trade Secrets Act of 2016 passed by Senate and House

May 9, 2016

On April 11 and April 27, 2016, the Senate and House passed respectively the Defend Trade Secrets Act of 2016 (DTSA). The President indicated he will sign DTSA into law. The DTSA provides a federal civil cause of action for trade secret misappropriation with various remedies available. The DTSA differs from the Uniform Trade Secret Action in several ways. An individual cannot be held criminally or civilly liable for disclosure of a trade secret made in confidence to a government official or to an attorney for the sole purpose of reporting or investigating a suspected legal violation. It requires an "employer shall provide notice of the immunity" relating to lawful disclosures "in any contract or agreement with an employee that governs the use of a trade secret or other confidential information." Therefore, if an employee signs a confidentiality agreement, the confidentiality agreement must be modified to include notice of the DTSA's provisions on lawful disclosures. Employers may cross-reference a policy document provided to the employee. The DTSA links companies' ability to recover exemplary damages or attorneys' fees in a private cause of action to providing notice to employees that trade secret disclosure to a government official or to an attorney for the sole purpose of reporting or investigating a suspected legal violation is permitted.

Companies should consider revising employment agreements, NDA's, and other agreements with employees containing provisions relating to confidential company information to include this notice provision so they do not lose the ability to recover exemplary damages and attorneys' fees should they need to enforce the NDA. As the President has already stated he will sign this bill into law, no good reason exists to delay such revisions.