

Federal Trade Secret Law Brings New Protections to Confidential Business Data

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A trade secret is a piece of non-public information that is valuable to your business, and is currently protected only by a patchwork of laws that vary from state to state. The Defend Trade Secrets Act (“DTSA”), passed by Congress on April 27, 2016 and which is expected to be signed by President Obama, provides a uniform approach to trade secret protection at the federal level and brings significant new remedies for the theft of trade secrets. By enacting the DTSA, Congress has recognized that confidential data, like other forms of intellectual property, is an important business asset that requires strong protection.

The goal of the DTSA is to help companies protect confidential information and provide remedies in the event trade secrets are misappropriated by an employee or competitor. Like most existing state trade secret laws, the DTSA protects financial, business, scientific, technical, economic and engineering information (including plans, formulas, designs, prototypes, methods, techniques, processes, procedures, programs and codes), provided that the information is valuable because it is not publicly available. The DTSA now provides a federal cause of action for theft of those trade secrets, and allows a court to issue injunctions and award monetary damages and reimbursement of attorneys’ fees. Unlike current state laws, the DTSA also allows a court to order the immediate seizure of trade secrets in extraordinary circumstances from a person or business who has misappropriated them from the legitimate owner.

The DTSA requires companies to notify their employees, contractors and vendors that governmental immunity may be available for reporting trade secret theft. Failure to give the required notice may bar the company from recovering attorneys’ fees or punitive damages in any lawsuit brought pursuant to the DTSA.

Importantly, the protections and remedies afforded by the DTSA and state trade secret laws are generally available only where the business has taken reasonable steps to protect its trade secrets. Common ways of protecting confidential information are to ensure that all contracts with employees, contractors and vendors include appropriate provisions for the protection of confidential information and to adopt company-wide policies and procedures for accessing, storing and disclosing non-public data.

The passage of the DTSA will likely cause more businesses to take action to protect their trade secrets, and will lead to more disputes regarding confidential business information. If your company has trade secret protections in place, you should ensure that your contracts, policies and procedures (particularly employment agreements) comply with the requirements of the DTSA and/or your state’s trade secret laws and update them if necessary. If your company does currently not take steps to protect confidential business information, you should consider immediately adopting written agreements and policies to take advantage of the potential benefits afforded by the DTSA and state trade secret laws.