



New Federal Trade Secret Law Requires Notice to Employees

The Federal Defend Trade Secrets Act of 2016 gives business owners a new weapon to combat misappropriation of trade secrets, but also requires businesses to give notice to their employees that they may not be held liable if they disclose trade secrets for the purpose of reporting a suspected violation of law. Unless business owners provide the proper notice, they may be foreclosed from seeking attorney fees or exemplary damages for misappropriation of trade secrets.

Under the Act, an individual may not be held criminally or civilly liable for the disclosure of a trade secret if the disclosure: (i) was made solely for the purpose of reporting or investigating a suspected violation of law; and (ii) was made in confidence to a government official, directly or indirectly, or to an attorney.

The Act also immunizes employees from liability for a disclosure made in a complaint or other document filed in a lawsuit, if the filing was made under seal.

Employers are required to provide notice of these statutory protections in any contract or agreement with an employee, independent contractor or consultant regarding trade secrets or other confidential information.

Employers may comply with the notice requirement with a cross-reference to the employer's written policy for reporting suspected violations of law.

Employers who fail to comply with the notice requirement would be prohibited from recovering exemplary damages or attorney fees against the employee. Other remedies would remain available, including actual damages and the new federal remedy of civil seizure, by which a federal court may authorize federal law enforcement officials to seize trade secret information anywhere in the United States before it can be moved, hidden or otherwise made inaccessible.

The notice requirement applies to contracts or agreements **entered into or updated after May 11, 2016.**

For questions about the Defend Trade Secrets Act of 2016 or other intellectual property issues, please contact:

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