

President Barack Obama Signed the Defend Trade Secrets Act

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On May 11, 2016, President Barack Obama signed the Defend Trade Secrets Act (DTSA) 2016. The DTSA provides a federal right of action for the misappropriation of trade secrets. Unlike previous actions, whereby an entity could only bring civil actions for trade secret protection in state court under state law, the DTSA provides a federal standard.

Under the DTSA, a trade secret owner may file a civil action in a U.S. district court seeking relief for trade secret misappropriation related to a product or service in interstate or foreign commerce. The bill establishes all forms of remedies, including injunctive relief, compensatory damages, and even attorney's fees. There is a three-year statute of limitation to bring the action, which starts from the date of discovery of the misappropriation.

In addition, and more importantly, the trade secret owner may apply for and a court may grant, in extraordinary circumstances, an ex parte seizure order to prevent dissemination of a trade secret if the court makes specific findings, including that: (1) a temporary restraining order or another form of equitable relief is inadequate, (2) an immediate and irreparable injury will occur if seizure is not ordered, and (3) the person against whom seizure would be ordered has actual possession of the trade secret and any property to be seized.

In most trade secret cases, former employees are involved, especially in situations where the former employee moves to a competitor. The DTSA addresses such a situation and provides a remedy designed to help prevent former employees from taking company secrets to competitors. In early versions of the bill, there were concerns that such a remedy would severely limit an employees' mobility. However, under the signed DTSA, any injunctive relief limiting a former employee's movement must be based on "evidence of threatened misappropriation," not merely on the basis of "the information the person knows."

Furthermore, the DTSA offers immunity from liability (whistle blower protection) for confidential disclosure of a trade secret to the Government or in a Court Filing (made under seal).

If you should have any questions or concerns with respect to the new bill, please contact our offices.

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