

**June 1, 2016**

**Defend Trade Secrets Act**

On May 11, 2016 President Obama signed into law the Defend Trade Secrets Act (DTSA). The DTSA, which amended The Economic Espionage Act "EBA" (18 USC §1832-1839), became effective immediately and provides a federal private right of action for trade secret misappropriation or theft claims. The DTSA does not preempt state trade secret law so a plaintiff can elect to file a lawsuit in a state or federal court. The DTSA provides remedies similar to those found in the Uniform Trade Secrets Act provisions including injunctive relief, actual damages, unjust enrichment, reasonable royalties, exemplary damages for willful and malicious misappropriation, and attorney's fees.

The DTSA protects whistleblowers from retaliatory accusations of trade secret misappropriation, so long as the whistleblowers disclose trade secret information to government or court officials in confidence. In order for an employer to qualify for enhanced damages resulting from theft of trade secrets by an employee, employment contracts or employee manuals must include a whistleblower notice provision.

If you are interested in taking advantage of the additional protections offered by the DTSA please contact us so that your future contracts comply with the DTSA requirements. In the meantime, employers should consider taking the following steps to protect against trade secret misappropriation: 1) review and identify your company's trade secrets; 2) assess the value of these trade secrets (and the potential impact of their loss); 3) examine the ways in which those secrets may be exposed or threatened (confidentiality is absolutely key to maintaining protection); 4) take measures to secure trade secrets through protective onboarding and offboarding strategies and workplace policies and procedures, including: i) update contracts to include confidentiality and non-disclosure obligations, ii) update data security policies and practices, iii) use exit interviews to remind employees of their confidentiality duties; and iv) follow up with employees after they have left employment (e.g., with reminders of obligations and/or cease and desist demands).