

Impact of the New 'Defend Trade Secrets Act'

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The Defend Trade Secrets Act of 2016 ("DTSA"), which went into effect on May 11, 2016, federalizes trade secrets law. For the first time, now, employers can file civil lawsuits for trade secrets theft under the federal Economic Espionage Act ("EEA"). Before the DTSA, prosecutors could bring criminal cases under the EEA for trade secrets misappropriation, but private civil cases had to be filed under state law. Now, U.S. district courts have original jurisdiction over civil causes of action for trade secrets theft.

A goal of the DTSA is to unify trade secrets law. Although the Uniform Trade Secrets Act provided a framework for states to follow, there were still state-to-state differences in how trade secrets law was applied. However, the DTSA supplements rather than preempts state laws. State trade secret laws now will co-exist with the DTSA. Another goal of the DTSA is to provide easier access to federal courts, which will be helpful particularly as to international and cross-state cases as well as complicated technological matters.

The most controversial provision of the DTSA allows courts to issue ex parte seizure orders to prevent the dissemination of a trade secret. This extreme remedy allows a trade secret owner, "in extraordinary circumstances," to seize property of a competitor without providing any notice. The court obtains custody of the property until further court determination. To prevent abuse of this remedy, the DTSA allows parties to seek damages if they are harmed by a wrongful or excessive seizure. This seizure provision will serve as a new powerful tool in trade secret litigation as there is no comparable remedy under any state's trade secrets laws.

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