

# Use This Language to Comply with the Notice Requirements in the New Federal “Defend Trade Secrets Act”

## Labor & Employment Law Update

on May 17, 2016

As we reported on May 13, 2016, there is now a federal statute, called the Defend Trade Secrets Act (DTSA) that provides a federal cause of action for trade secret misappropriation. The full DTSA is found [here](#).

One important feature of the DTSA is that it, like most state trade secret statutes, allows employers to recover punitive damages and attorney’s fees for the unauthorized use or disclosure of trade secrets. However, unlike the state statutes, the DTSA conditions the availability of these remedies on compliance with certain notice requirements contained in Section 7 of the Act.

The notice must be provided “in any contract or agreement with an employee that governs the use of a trade secret or other confidential information.” The DTSA also allows notice to be provided by cross referencing a policy document that is provided to the employee. Although the Act specifically mentions contracts with “an employee,” elsewhere it defines “employee” to include “any individual performing work as a contractor or consultant for an employer.”

The scope of contracts covered by the Act is wide. It would appear to include not only confidentiality agreements entered into at the time of hire, or during employment, but also severance and separation agreements that contain confidentiality provisions.

We strongly suggest that employers add the following language to any contracts that relate to the protection of trade secret information:

### **Notice of Rights Pursuant to Section 7 of the Defend Trade Secrets Act (DTSA)**

*Notwithstanding any provisions in this agreement or company policy applicable to the unauthorized use or disclosure of trade secrets, you are hereby notified that, pursuant to Section 7 of the DTSA, you cannot be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that is made (i) in confidence to a Federal, State, or local government official, either directly or indirectly,*

*or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law. You also may not be held so liable for such disclosures made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. In addition, individuals who file a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual files any document containing the trade secret under seal and does not disclose the trade secret, except pursuant to court order.*

We will keep you updated on further developments under the DTSA.

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