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Newly Enacted “Defend Trade Secrets Act” Requires Notice Provision to Be Added to Future Confidentiality Agreements to Preserve Important Rights

By [Karina B. Sterman](#)

As you may have heard, on May 11, 2016, President Obama signed into law the new federal [Defend Trade Secrets Act](#) (DTSA). This is a significant and comprehensive law that now allows holders of trade secrets to pursue civil litigation for trade secret misappropriation in federal court.

A key aspect of the DTSA is that it allows holders of trade secrets to recover enhanced damages in lawsuits, specifically punitive damages and attorneys' fees. However, in order to obtain such damages when suing an employee (defined in the DTSA to include an independent contractor), businesses must now show that they provided a notice of immunity “in any contract or agreement with an employee that governs the use of a trade secret or other confidential information.” Such agreements include standard confidentiality agreements as well as severance and separation agreements that contain confidentiality provisions.

Specifically, the notice of immunity in the agreements must state that an employee has the right to disclose trade secrets and other confidential information in limited circumstances related to the reporting or investigation of suspected illegal conduct or in confidential filings (i.e., filings under seal) in a lawsuit or other proceeding.

The notice requirement applies only to agreements or amendments to agreements entered into after May 11, 2016, so there is no need to revise existing agreements.

However, we recommend that you contact your Greenberg Glusker attorney to assist you with preparing the requisite notice of immunity for your future agreements and policies to ensure that you retain your right to exemplary damages and attorneys' fees under the DTSA.

For advice or to answer questions, please contact anyone in our [Employment Law Group](#):

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