

Defend Trade Secrets Act of 2016

The Defend Trade Secrets Act of 2016 (DTSA), Pub. L. No. 114-153 creates a separate federal cause of action for misappropriation of trade secrets. The law preserves the three-year statute of limitations in the Oregon Uniform Trade Secrets Act (ORS 646.471) and authorizes remedies similar to those available under state law. 18 USC 1836(b)(3). It does not preempt state law.

Among other provisions, the DTSA contains whistleblower immunity provisions that provide civil and criminal immunity for employees who disclose trade secrets to the government or an attorney solely for the purpose of reporting or investigating a suspected violation of law, or who disclose trade secrets in a court filing if such filing is made under seal. 18 USC 1833(b). Of particular practical significance to employers, the DTSA requires employers to provide notice of the whistleblower immunity in any agreement entered into with an employee that governs the use of trade secrets. 18 USC 1833(b)(3).

Failure to provide the required notice will prohibit employers from accessing the full scope of remedies available under the DTSA if the employee misappropriates a trade secret, including exemplary damages (up to twice the amount of actual damages) and attorney fees in the case of willful or malicious violations.

The notice may be provided in the agreement itself or the agreement may reference a whistleblower policy that contains the required notice. The notice requirements apply to all agreements entered into or updated after the DTSA date of enactment, May 11, 2016. Employers should consider updating their employment policies and agreements to notify employees of the whistleblower immunity to preserve the remedies available to them under the DTSA.

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