

# Defense of Trade Secrets Act Prompts New Notice in Employment and Contractor Agreements

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McGlinchey Intellectual Property Alert

Now that the Defense of Trade Secrets Act (“DTSA,” Public Law 114-153) is federal law, employers and contractors should include a notice of immunity in all confidentiality or trade secret provisions in any employment agreement or contractor agreement.

In the employment context, employers should at least include the notice of immunity in an updated policy manual that is provided to and acknowledged by the employee and cross-referenced in the employment agreement.

DTSA requires trade secret owners to include a notice of immunity under DTSA for whistleblowers in employment agreements and/or employee policy manuals and any other agreement with a contractor or consultant which addresses trade secret obligations. Trade secret owners must take this step to be able to take advantage of remedies now available under DTSA should their employees or contractors/consultants misappropriate a trade secret.

The notice of immunity for whistleblowers should notify the employee or contractor that, under 18 U.S.C. § 1833(b), he or she will be immune from liability for any disclosure of a trade secret that is:

Made to a federal, state, or local government official, either directly or indirectly, or to an attorney, solely in connection with reporting or investigating a suspected violation of law; or

Made in a complaint or other document filed in a lawsuit or other proceeding, if the filing is made under seal.

If the trade secret owner fails to provide this notice of immunity, the trade secret owner is barred from recovering either punitive damages or attorneys’ fees otherwise recoverable under the DTSA for a misappropriation of trade secrets by the employee or contractor.

In addition to requiring a new notice in employment agreements and contracts, DTSA holds the potential for developing a more consistent body of law governing trade secrets in the United States. The law has created a

new federal private right of action for the misappropriation of trade secrets and provides trade secret owners with a new alternative right of action in federal courts, in addition to remedies potentially already available under state law. It also provides for the extraordinary remedy of ex parte seizure orders, to protect and prevent the disclosure of trade secrets, under certain circumstances.

For further information on this topic, contact **Drew Patty**, Team Leader of McGlinchey Stafford's Intellectual Property Group, or any other member of the firm's [Intellectual Property Group](#).