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TRADE SECRETS ALERT | NIXON PEABODY LLP

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President Obama signs Defend Trade Secrets Act, providing federal jurisdiction for trade secret misappropriation

By Jennifer Hayes and Robert A. Weikert

Yesterday, President Obama signed the Defend Trade Secrets Act (DTSA), which amends the Economic Espionage Act to provide federal jurisdiction for the theft of trade secrets. As set forth in the Defend Trade Secrets Act, and as reported in a previous [Alert](#) dated April 27, 2016, federal jurisdiction over trade secret misappropriation is necessary because (1) trade secret theft occurs in the United States and around the world; and (2) trade secret theft, wherever it occurs, harms the companies that own the trade secrets as well as the employees of the companies.

Theft of intellectual property, including trade secrets, is estimated to cost American firms more than \$300 billion a year, according to a 2013 report by the Commission on the Theft of American Intellectual Property. The Defend Trade Secrets Act defines “misappropriation” consistently with the Uniform Trade Secrets Act, which is the basis of most state trade secret protections. The Defend Trade Secrets Act also provides for similar remedies, including injunctive relief, compensatory and exemplary damages, and the recovery of attorneys’ fees in the event of willful or malicious misappropriation.

The Defend Trade Secrets Act provides a new remedy of civil seizure of property, necessary to prevent the propagation or dissemination of the trade secret upon a showing of immediate or irreparable harm.

The statute of limitations for bringing a federal civil action for trade secret misappropriation is three years.

The Defend Trade Secrets Act also provides “whistleblower” protections for employees who disclose, in confidence, trade secrets to attorneys or government agencies for the purpose of reporting or investigating a suspected violation of law.

The DTSA also requires the attorney general to prepare a report on the scope and breadth of the theft of the trade secrets of United States companies occurring outside of the United States, as well as other issues related to the DTSA.

The DTSA will not preempt already-existing state trade secret laws.

Nixon Peabody's trade secret team is available to advise companies about the significance of this new remedy and, more importantly, what they should be doing with respect to their trade secret management and enforcement programs in light of the DTSA's enactment. For instance, employers should be particularly aware of the new whistleblower provisions and should review (and consider updating) relevant documentation in light of these provisions. Likewise, an early (and then regular) review and assessment of current trade secret management policies and actions can substantially increase the value of your intellectual property portfolio.

For more information on the content of this alert, please contact your regular Nixon Peabody attorney or:

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