



**FREEMAN FREEMAN &  
SMILEY, LLP**

**EMPLOYMENT LAW  
BULLETIN**

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## **The Defend Trade Secrets Act Compels Employers to Provide Mandatory Immunity Notice**

On April 27, 2016, the United States House of Representatives passed the Defend Trade Secrets Act of 2016 ("DTSA") by a landslide margin, following the Senate's lead and setting the stage for President Obama to sign the DTSA into law. If enacted (as is fully expected), the DTSA would provide litigants a federal civil right of action for the misappropriation of trade secrets.

The DTSA is in many respects different than its state counterpart, the California Uniform Trade Secrets Act ("UTSA"), Cal. Civ. Code Sections 3426, et seq., which currently exclusively governs trade secrets claims in this State. Like the DTSA, the UTSA provides plaintiffs remedies, including injunctive relief, damages, restitution, and, in certain cases, attorney's fees, for the misappropriation of trade secrets. Unlike the UTSA, the DTSA provides litigants the ability to seek an ex parte civil seizure order (subject to certain safeguards) and contains a significant immunity provision protecting whistleblowers.

That immunity provision requires an employer to provide notice of the immunity in any contract or agreement with an "employee" (a term that is defined to also include independent contractors and consultants). If an employer fails to comply with this notice requirement, an employer is prevented from recovering exemplary damages and attorney's fees on claims brought under the DTSA.

### **What Employers Should Do Now:**

Employers should immediately conduct an audit of their policies, agreements, contracts, and handbooks relating to any provision concerning the employer's trade secrets policy and/or its confidential/proprietary information policy and have counsel review those documents to ensure that the employer's documents comply with the DTSA. With the expected passage of the DTSA, now would also be an opportune time to revisit trade secrets policies and practices to ensure that employers are exercising best trade secrets practices in compliance with both state and (anticipated) federal law.

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