

As featured in **Seattle Business**

# Attention, Businesses!

## Federal law provides new tools for protecting your trade secrets.



**BRADLEY**



**MAYER**

**Y**our business’s formula for success may not be akin to a recipe for a secret sauce. But it is likely that you do not want to share with your direct competitors the unique business methods you have developed over time or your confidential list of coveted customers. You may believe that your company’s trade secrets are secure because newly hired employees sign standard nondisclosure agreements.

Unfortunately, with growing employee mobility and the ease of technology, your company’s valuable business information and trade secrets can go out the door to your direct competitor with the click of a mouse. Chasing after fleeing employees to retrieve your trade secrets has never been easy. This is particularly true if your fleeing employee crosses state lines. Fighting this battle can also be expensive, especially for small businesses when litigation may be funded by your competitor.

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Fortunately, a new federal law gives businesses some new tools for protecting trade secrets — the Defend Trade Secrets Act (DTSA). If you act now to update your agreements, your business can reap some of the following benefits under the DTSA.

### **Business Gains a Remedy in Federal Court**

When the DTSA became effective on May 11, businesses gained the ability to file suit in federal court. Until now, trade secret claims were typically pursued only in state court under laws that often varied from one state to another. The DTSA provides a uniform remedy in federal court across state lines. It also defines “trade secret” more broadly than some state laws. This new federal remedy also allows businesses to recover exemplary damages and attorney’s fees from the fleeing employee, like many state trade secret laws.

### **Legally Mandated Notice of Immunity**

To recover exemplary damages and attorney’s fees in federal court

under the DTSA, however, your business will need to update its agreements with employees, contractors and consultants. Congress required that businesses provide notice that those workers have the right to disclose trade secrets — and are immune from liability — under limited circumstances. This includes when disclosure is made to a government official or attorney, when reporting or investigating a violation or the law, or when filing suit, if made under seal.

Your business must provide notice of the immunity in any agreement that addresses confidential information or trade secrets. This typically includes employment agreements, independent contractor agreements, policy manuals, employee handbooks, offer letters, nondisclosure agreements, confidentiality agreements and other related documents.

Importantly, the DTSA was intended to cover more than agreements with your employees. The law also provides immunities to consultants and independent contractors. For this reason, it would not be sufficient to simply update an employee handbook with the required notices because handbooks are not typically distributed to consultants or contractors.

A business that fails to include the required notices will not be able to recover the potent remedies of exemplary damages and attorney’s fees in a lawsuit brought under the DTSA. Businesses should consult legal counsel to determine which agreements need the notice provision and to ensure the language contained in the immunity notice meets the law’s strict requirements.

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