

Defend your trade secrets

A look at how a new trade secret law will affect businesses

A trade secret is valuable information not generally known to the public that a company can use to provide a competitive advantage. Every business has trade secrets. Trade secrets can include formulas, processes, methods, know-how, customer lists, business plans and other confidential information. Unfortunately, current or former employees, competitors, vendors and even suppliers can improperly acquire a company's trade secrets.

Current employees may also inadvertently share company trade secrets. Trade secret theft from U.S. companies is estimated to cost those companies billions of dollars every year. Trade secrets have long been protected by federal criminal laws like the Economic Espionage Act of 1996, but civil actions have been left to state law. On May 11, 2016, the Defend Trade Secrets Act of 2016 (DTSA) was signed into law.

The DTSA now provides federal jurisdiction for civil actions for the theft of trade secrets and seizure of stolen trade secrets in extraordinary circumstances, as well as remedies that may include an injunction to protect the trade secret and monetary damages.

Smart Business spoke with Jennifer Hanzlicek, an Attorney at Law at Brouse McDowell specializing in intellectual property, about trade secrets and the implications of the DTSA for businesses.

How should businesses be protecting their trade secrets?

Adding simple computer features like security software and computer logouts and locks can reduce your exposure. Companies should also limit access to sensitive company information to necessary employees. Train employees to safeguard company information by locking it away after the

workday, to keep and frequently change passwords on their computers and mobile devices, to avoid suspicious links and emails, and to shred hard documents. Additionally, the use of external hard drives and thumb drives can make it easy to transport data, but also leaves it unsecured. Prohibiting their use can reduce the loss of the company's trade secrets. Have nondisclosure agreements with contractors, consultants, suppliers, vendors and other business partners that set forth the terms of the disclosure of any confidential information, including what is considered to be confidential, the term of the agreement, and the provisions for a breach of the agreement arising from an improper disclosure of trade secrets. Employment agreements should also contain nondisclosure provisions to protect confidential information.

What does the Defend Trade Secrets Act of 2016 mean for businesses?

Although the DTSA may provide added protections for companies, you still need to take precautions.

- Educate your employees to protect the company's trade secrets by limiting their exposure. Your trade secrets could be compromised by an 'innocent' social media post of a picture taken in a production area or discussions in unsecure locations like restaurants and airports.



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- Eliminate exposure of trade secrets by preventing unnecessary visitor access to areas of the company that contain sensitive company information.
- Revise employee agreements to fulfill the notice requirement of the DTSA for trade secret disclosure to the government. Under the new law, companies must provide notice of whistleblower and retaliation protections for reporting suspected trade secret violations to both current employees and contractors. If no notice is provided, the company may lose exemplary damages and attorney's fees in an action against that employee. You should also include a procedure in your company policies for an employee to report suspected trade secret violations to government officials.
- Review and update current company trade secret policies to comply with the DTSA, taking into account soon-to-be former employees that may take trade secrets from the company and new employees that could bring trade secrets from a previous job.

It is uncertain how the DTSA will impact future litigation. However, businesses should review current agreements to comply with the new law. Trade secrets are valuable assets that must be protected. Creating policies to safeguard trade secrets within the organization can help to protect them. ●