**President Obama Signs Into Law the**

**Defend Trade Secrets Act of 2016**

**and the White House Takes Aim at Noncompete Agreements©**

On May 11, 2016, President Obama signed into law the Defend Trade Secrets Act of 2016 (“DTSA”) creating a new cause of action that may be filed in federal court for misappropriation (theft) of trade secrets. Like the Uniform Trade Secrets Act adopted by the Uniform Law Commission in 1979 and amended in 1985 that has been adopted in 48 states (Florida included), the DTSA allows for the imposition of injunctive relief, recovery of actual and exemplary damages, unjust enrichment and attorney fees. Additionally, the law provides for *ex parte* seizure proceedings.

While the DTSA provides additional protections to those businesses seeking to protect trade secrets, there is a gotcha provision relating to attorney fees. The DTSA requires that the party entering into the trade secret, nondisclosure, or nonmisappropriation agreement must be advised that she is immune from prosecution if she discloses trade secret information in connection with a court proceeding or to the government.

The immunity disclosure may be included in the written agreement or other written policy. From a best practices perspective, the immunity disclosure should be in the agreement that contains the provision regarding nondisclosure or misuse of trade secrets signed by the employee or other party.

If your business requires employees to sign these types of agreements, including confidentiality, noncompete or nonsolicitation agreements, such agreements should be updated to include the required immunity disclosure provision.

At about the same time President Obama signed the DTSA into law, the White House began looking into the use of noncompete agreements across the country. Noncompete agreements are widely used in Florida along with many other states. Noncompete agreements can be useful tools to protect legitimate business interests, but oftentimes employers use them to prohibit any competition. A noncompete agreement that prohibits all competition is unenforceable, but most employees do not know that an agreement to prohibit generic competition is unenforceable. Another reason the White House is interested in the issue is because of the adverse effect such agreements can have on the employees who enter into them following termination. Whether Congress, too, will chime into the discussion remains to be seen. Stay tuned.

*A note to the reader: This article is intended to provide general information and is not intended to be a substitute for competent legal advice. Competent legal counsel should be consulted if you have questions regarding compliance with the law.*

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