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Corporate Remedies for Trade Secret Violations

By Matt Robinson

The Defend Trade Secrets Act is a new federal law giving companies federal court remedies for employee trade secret violations. The Act allows recovery of exemplary (double) damages and attorneys' fees in certain circumstances.

The best way to protect trade secrets is to have procedural protections in place to prevent misappropriation in the first place. However, the Defend Trade Secrets Act is a powerful new weapon to halt misappropriation and to obtain damages for misappropriation.

The Act requires notice be given to all employees with a contract or agreement relating to trade secrets or confidential information. If the notice is not given, the employer may lose the right to collect exemplary and attorneys' fee damages. We recommend incorporating the notice into a confidential information/trade secrets policy and referring to the policy in any contracts or agreements relating to trade secrets or confidential information.

A sample notice follows: "This policy and any contract or agreement you have with the Company does not prohibit disclosures in conformance with Section 7 of the Defend Trade Secrets Act, which also protects you from criminal or civil liability under any Federal or State trade secret law for: (1) confidentially disclosing a trade secret to a Federal, State, or local government official, either directly or indirectly, or to an attorney solely for the purpose of reporting or investigating a suspected violation of law; (2) disclosures made under seal in a complaint or other document filed in a lawsuit or other proceeding; or (3) disclosure to your attorney for use in a lawsuit for retaliation by an employer for reporting a suspected violation of law and using the trade secret information in the court proceeding as long as any document containing the trade secret is filed under seal and you do not otherwise disclose the trade secret without a court order to do so."

If you have any questions, please contact Matt Robinson at (314) 862-3295 or mattrobinson@hessemartone.com.