



Fox Rothschild Podcast

Featuring Partner John Gotaskie

We are talking today on FoxCast with John Gotaskie about the new Defend Trade Secrets Act. Our focus is the importance of companies having nondisclosure agreements which are in compliance with this new law. John is a partner and litigator with Fox Rothschild in Pittsburgh. He represents individuals, partnerships and companies in diverse legal matters, including complex commercial litigation, bankruptcy litigation and franchising issues. John also is editor of the firm's [Franchise Law Update](#) blog. John, good morning.

John Gotaskie: Good morning. Good to be here.

***Question:** You and some of your colleagues, including Jim Singer, have been blogging about the new Defend Trade Secrets Act.*

John Gotaskie: Yes, we have. It's important for organizations to update their form employee and independent contractor nondisclosure agreements after this new law to make sure these agreements comply with the act's requirements relating to "whistleblowers."

***Question:** John, please tell our listeners a little about the new act.*

John Gotaskie: Sure. The act helps U.S. businesses, or is intended to help U.S. businesses I should say, protect their trade secrets. It allows companies to ask the federal courts, on an expedited basis, to order the seizure of property necessary to prevent the dissemination of the trade secrets. I guess it would defend them as well now that we mention it. The DTSA also permits businesses to seek injunctions and damages in federal court for trade secret misappropriation. It applies to any company that owns trade secrets and wants to protect those trade secrets from theft, from breach of a duty to maintain secrecy or espionage. And I want to emphasize that this jurisdiction that's given is a new type of federal jurisdiction that hadn't existed before. So this is an expansion of federal jurisdiction which normally is quite limited.

***Question:** John, where does the act intersect with whistleblowers?*

John Gotaskie: The act provides a special type of immunity for whistleblowers who use trade secrets. Under the terms of the law, an individual cannot be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that is made solely for the purpose of reporting or investigating a suspected violation of some other law and in confidence to – and here's the key – a government official, either directly or indirectly, or to their attorney. Additionally, whistleblowers have some immunity – again not complete immunity in this case –



if a disclosure of a trade secret is made in a complaint or other document filed in a lawsuit or other proceeding, but the key here is that such filing has to be made under seal.

Question: John, are there other conditions upon which a whistleblower may be immune?

John Gotaskie: Indeed there are. An individual may have immunity when filing a lawsuit for retaliation, let's say, by an employer for reporting a suspected violation of the law. So someone gets a retaliation suit, that might be an issue. The other thing that happens is in that case, the person can disclose the trade secret to his or her attorney and use that same trade secret information in the court proceeding. Again, the key is that it has to be filed under seal and it can't be disclosed (the trade secret) except pursuant to a court order.

Question: John, why is the immunity section of the act especially important for employers?

John Gotaskie: Here's the key. It requires employers to provide all of their employees with notice of the act's immunity clauses "in any contract or agreement with an employee that governs the use of a trade secret or other confidential information." The act defines "employees" to include, as I mentioned earlier, both actual employees in the traditional sense and its independent contractors. If an employer does not comply with the notice requirement, the employer's liability to recover damages against that employee in any federal action for misappropriation of trade secrets will now be limited going forward.

Question: John, how does an employer achieve compliance?

John Gotaskie: It's a pretty simple step, actually. The employers can comply with the notice requirement by updating their form employee and independent contractor agreements. The updates should include either the notice requirement or a cross-reference to a policy document (such as an updated employee handbook) that states the employer's reporting policy for a suspected violation of law.

Narrator: Well, thank you John. Listeners, to confidentially discuss whether your organization's nondisclosure agreements are in compliance with new Defend Trade Secrets Act, please contact John Gotaskie in Pittsburgh at 412.394.5528 or at jgotaskie – that's J-G-O-T-A-S-K-I-E – at foxrothschild.com.

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