

What Civil Remedies are Available Under the Defend Trade Secrets Act?



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10/30/2024

The DTSA supplements the criminal penalties of the EEA ([found here](#)) by providing a range of civil remedies for trade secret misappropriation. According to the DTSA, misappropriation includes the unauthorized use or disclosure of a trade secret without consent, when the person involved:

- Acquired knowledge of the trade secret through improper means.
- Knew or had reason to know at the time of disclosure or use that the trade secret was obtained improperly.
- Realized, before a significant change in position, that the trade secret was acquired by accident or mistake.

Available Civil Remedies under the DTSA Include:

- **Injunctions:** An injunction can be available to prevent the disclosure of trade secrets, although courts will be reluctant to enter an injunction where it can be shown that an injunction prevent someone from pursuing employment. However, if there is evidence of a threat of misappropriation that would lead to irreparable injury such circumstances strongly favor the entry of an injunction.
- **Compensatory Damages:** Compensatory damages provide a recovery for actual loss and unjust enrichment not included in the actual loss calculation, or a reasonable royalty for unauthorized use.
- **Exemplary Damages:** In some situations, exemplary damages are available for up to twice the amount of damages for willful and malicious misappropriation.
- **Attorneys' Fees:** Attorneys fees can be recoverable for the prevailing party in cases of bad faith or malicious actions.
- **Ex Parte Seizure Orders:** In rare cases, an ex parte seizure order may be sought to prevent the dissemination of trade secrets where traditional injunctive relief would be inadequate.

Additionally, the DTSA provides immunity for employees, consultants, and contractors under federal trade secret law for certain disclosures. Employers must inform these individuals about DTSA immunity in contracts related to trade secrets or confidential information. Failing to provide this notice can result in the forfeiture of attorneys' fees and exemplary damages.

The DTSA also sets a statute of limitations for civil claims at three years from the date the misappropriation was discovered or should have been discovered.

This content was prepared for publication with the assistance of ChatGPT.