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Labor and Employment Update

Defend trade secrets act of 2016 requires employers to disclose certain immunities in confidentiality agreements with employees

On April 27, 2016, Congress approved the Defend Trade Secrets Act of 2016 (the Act), to extend the Economic Espionage Act of 1996 to allow civil lawsuits to protect trade secrets. This law contains a whistleblower immunity for reporting violations of the law to the government. It allows employees to disclose a trade secret to his or her attorney and to use it in court if filed under seal and if further disclosure is limited pursuant to a court order.

Employers must inform employees about this immunity in any contract or agreement that governs the use of trade secrets or confidential information. Disclosure can be achieved by cross referencing in said agreements, an employment policy that outlines this protection. Failure to make this disclosure does not render the confidentiality covenants illegal, but prevents the employer from invoking the exemplary (up to double) damages provision of the Act.

Until now, protection for trade secrets depended primarily on state law. In Puerto Rico, Law 80-2011 creates a mechanism to protect trade secrets. It does not have immunity provisions similar to those of the Act.

Our attorneys at Reichard & Escalera are available to assist you in understanding and implementing these developments.

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