

Massachusetts Adopts Uniform Trade Secrets Act, Expands Protections

AUGUST 28, 2018

Recently, Massachusetts adopted the language of the Uniform Trade Secrets Act (UTSA), which significantly expands the protections afforded to trade secrets under Massachusetts law. Massachusetts became the 49th state to adopt the UTSA and the new law will be effective on October 1, 2018.

Adopting the UTSA changes Massachusetts trade secret law in three principal ways. First, the law revised the definition of “trade secret.” Under common law, a trade secret had to be used in one’s business and courts interpreted this provision as requiring the continuous use of information. The recently adopted definition of “trade secret” does not include such a requirement, meaning that information not in use at the time an action is initiated can still be deemed a trade secret. Second, the law provides a cause of action for actual or threatened misappropriation of trade secrets. The addition of the “threatened misappropriation” language is significant and will allow plaintiffs to file actions to protect trade secrets before they are taken. Moreover, this language suggests that Massachusetts may embrace the inevitable disclosure doctrine and might allow plaintiffs to demonstrate misappropriation absent actual use or disclosure by a former employee in situations in which the former employee could not do his or her new job without disclosing trade secrets. Finally, the law includes a provision that allows both plaintiffs and defendants to recover attorney’s fees if they assert or defend allegations of misappropriation in bad faith, making it easier for parties to shift costs if false misappropriation claims are made.

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