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The Pragmatic Disappointment of State Preemption: The 2016 Defend Trade Secrets Act and Its Failure to Protect Employee Whistleblowers from Federal Computer Crime Law

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Since the first reported trade secret case, *Vickery v. Welch*, which was decided by the Supreme Court in 1837, trade secret law and enforcement has existed exclusively in state law statutes and common law doctrines. Yet, on May 16, 2016, over 150 years since *Vickery*, President Barack Obama signed the Defend Trade Secrets Act (“DTSA”) into law as an amendment to the Economic Espionage Act (“EEA”). In addition to providing a federal claim of relief for misappropriation, the text of the DTSA contains a provision that provides immunity for whistleblowers from trade secret misappropriation liability. However, the immunity provision is not sufficient on its face for the protection of whistleblowers as intended by the DTSA's authors. The provision does nothing to define how far whistleblowers can go in accessing incriminating information, which is integral to encouraging disclosure and assuring whistleblowers of immunity under the DTSA. Furthermore, the immunity provision does not extinguish liability for violation of computer access laws, which directly govern the scope of authorized access to employer data or information.

Related People



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