Massachusetts Adopts Uniform Trade Secrets Act

On October 1, 2018, Massachusetts will become the 49th state to adopt a version of the Uniform Trade Secrets Act. The version of the UTSA that Massachusetts will adopt bears notable similarities to the Defend Trade Secrets Act, the two year old federal trade secrets statute. For example, both statutes allow for injunctive relief to prevent any “actual or threatened misappropriation,” and both statutes also provide that a trade secret can be information that provides “actual or potential” economic value from not being generally known. While one of the most notable aspects of the DTSA, the ex parte civil seizure mechanism that allows victims of trade secret theft to ask the court to seize stolen trade secret material, is not present in Massachusetts’ new trade secret law, Massachusetts’ version of the UTSA does allow the court to compel affirmative acts to protect a trade secret in appropriate circumstances. This provision is similar to other DTSA remedy provisions codified at 18 U.S.C. § 1836(b)(3). Both the DTSA and Massachusetts version of the UTSA also allow for exemplary damages where a trade secret is willfully or maliciously misappropriated, and like the DTSA at the time of its
enactment, the Massachusetts version of the UTSA does not apply to misappropriation occurring prior to the effective date or to continuing misappropriation that began prior to the effective date. As always, we are available to discuss how this new Massachusetts law and its interaction with the DTSA may affect your business.

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