

Guardians of the IP Law Galaxy: What Employment Lawyers Need to Know

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What's "IP" (Intellectual Property) Anyways?

- Brain Power
- Employer's value often is based on their employees
- Trade Secrets (e.g., formula to Coke, marketing plans, or customer lists)
- Copyright
- Patent
- Trademark

Happy Early Cinco De Mayo

- Defense of Trade Secrets Act most significant expansion of federal IP law in 70 years
- Passed Congress almost unanimously
 - 497-2
 - Amends criminal Economic Espionage Act to add civil claim
- Obama to sign this week probably
- Provides a federal cause of action and business certainty

Harmonizing Trade Secret Law

- Slightly changed the definition of trade secret (public v. “persons who can obtain economic value from its disclosure or use.”)
 - More like UTSA
- Federal 3 yr statute of limitations
- Allows seizure in “extraordinary circumstances.”
- Stamps out “inevitable disclosure” to the extent it prevents “a person from entering an employment relationship” and not based just “on what information the person knows.”
- Whistleblower Protection

Putting on the “white hat”

- Inoculation
- Property
- Electronic stuff (sequester)
- Two ways your client gets sued
- Get everything your client ever signed
- Make scripts for interaction (stay consistent)
- Multi-party cases (guilt by association)

Whistleblowers

- NDA, can I say anything?
- Gov’t
- Lawsuits
- Parties and counsel safe harbor
- New NDA requirements (notice of law must be printed prominently)
- Can be “secret” and “without notice.”
- If you want protection, hire a noncompete lawyer

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