

New Jersey

1. What is the statutory authority for trade secret protection in your state?

New Jersey has enacted the New Jersey Trade Secrets Act (NJTSA), a version of the model Uniform Trade Secrets Act (USTA). N.J.S.A. § 56:15-1, et seq. The NJTSA builds on New Jersey's common law tradition of trade secret protection. In addition to the NJTSA, New Jersey's Computer Related Offenses Act (CROA) § 2A:38-1, et. seq., provides victims of cybercrime, employee misuse, destruction, or unauthorized taking of computer information or programs with the ability to sue wrongdoers.

2. What are the elements of a trade secret claim in your state, and are any unique?

Violation of the NJTSA, N.J.S.A. 56:15-1, et seq., and DTSA, 18 U.S.C. § 1831, et seq., require a plaintiff to show (1) the existence of a trade secret, defined broadly as information with independent economic value that the owner has taken reasonable measures to keep secret, and (2) misappropriation of that secret, defined as the knowing improper acquisition and use or disclosure of the secret." *Bramshill Investments, LLC v. Pullen*, 2020 U.S. Dist. LEXIS 142344, at *3 (D.N.J. 2020) (quoting *Par Pharm., Inc. v. QuVa Pharm, Inc.*, 764 F. App'x 273, 278 (3d Cir. 2019)). The analysis under the DTSA folds into that of the NJTSA. *Id.*

3. How specific do your courts require the plaintiff to be in defining its "trade secrets?"

As defined by the NJTSA, "trade secret" means information, held by one or more people, without regard to form, including a formula, pattern, business data compilation, program, device, method, technique, design, diagram, drawing, invention, plan, procedure, prototype or process, that:

(1) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

N.J.T.S.A. § 56:15-2.

A plaintiff "must sufficiently identify the information it claims as a trade secret and allege facts supporting the assertion that the information is indeed protectable as such." *Oakwood Labs v. Thanoo*, 999 F.3d 892, 905 (3d Cir. 2021). While the information alleged to be a misappropriated trade secret must be identified with enough specificity to place a defendant on notice of the bases for the claim being made against it," "a plaintiff need not 'spell out the details of the trade secret to avoid dismissal.'" *Id.* at 906 (quoting *Diodes v. Franzen*, 260 Cal. App. 2d 244, 252 (Cal. Ct. App. 1968)).

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4. What is required in your state for a plaintiff to show it has taken reasonable measures to protect its trade secrets?

New Jersey, generally, requires a company to take reasonable precautions to protect secrets when it limits access to the trade secrets and its premises through signage and security measures.

While there are no hard and fast rules, examples of reasonable steps can include (1) requiring confidentiality agreements to access the protected information and company policies regarding the same (*Corporate Synergies Grp., LLC v. Andrews*, 2019, U.S. Dist. LEXIS 135293, at *8-9 (D.N.J. Aug. 12, 2019)); (2) keeping information in a locked office with restricted access (*P.C. of Yonkers, Inc. v. Celebrations! the Party & Seasonal Superstore, L.L.C.*, 2007 U.S. Dist. LEXIS 15216, at *6 (Mar. 2, 2007)); (3) and using computer monitoring systems with password-restricted access. *Id.*

5. Does your state apply the inevitable disclosure doctrine? If so, how is it applied?

New Jersey courts apply the inevitable disclosure doctrine. Under the inevitable disclosure doctrine, “an employer need not establish that its former employee has actually used or disclosed trade secrets. Rather, an employer may demonstrate that ‘there is a sufficient likelihood of inevitable disclosure of its trade secrets to a competitor.’” *Osteotech, Inc. v. Biologic, LLC*, 2008 U.S. Dist. LEXIS 17718, at *3 (D.N.J. Mar. 7, 2008) (quoting *Fluoramics, Inc. v. Trueba*, 2005 WL 3455185, at *8 (N.J. Ch. Div. Dec. 16, 2005)). Under the inevitable disclosure doctrine, a former employer is entitled to enjoin even anticipated employment or other business activity that would result in inevitable disclosure in order to protect the former employer’s confidential and proprietary information from disclosure. *Graco, Inc. v. PMC Global, Inc.*, 2009 U.S. Dist. LEXIS 26845, at *76-77 (Mar. 31, 2009).

6. How have courts in your state addressed the defense that an alleged trade secret is “reasonably ascertainable?” What needs to be shown to prevail on that theory?

New Jersey courts have not yet addressed the “reasonably ascertainable” issue.

7. What are the most recent “hot button” issues addressed by courts in your state regarding trade secret claims?

An interesting aspect of the NJTSA came up in *Intech Powercore Corp. v. Albert Handtmann Elteka GmbH & Co. KG*, 2021 U.S. Dist. LEXIS 57522 (D.N.J. Mar. 24, 2021) regarding whether profitability and pricing information constitute trade secrets under New Jersey law. While finding that they can qualify as trade secrets, the NJTSA requires any such trade secret to derive economic value from being not generally known to, and not being readily ascertainable by proper means by others. Because the Plaintiff did not show that the information regarding its revenue and profitability could not have been acquired through proper means, there was no misappropriation under the NJTSA. *Id.* at *21, n.9

8. How does your state’s Trade Secret law differ from the DTSA, as the latter is applied in your Circuit?

The DTSA’s definition of misappropriation includes instances where the trade secret is acquired by accident or mistake. 18 U.S.C. § 1839(5)(B)(iii)(II). Misappropriation under the NJTSA, however, requires that the recipient knew or had reason to know that the knowledge of the trade secret was derived or acquired through improper means in all instances, *i.e.*, not by accident or mistake. See N.J.T.S.A. § 56:15-2.

Another difference is that the NJTSA does not provide for the whistleblower immunity notice required under the DTSA. Under DTSA, if an employer decides to sue his former employee for misappropriating trade secrets under the DTSA, he needed to provide notice of this immunity to its employees to potentially recover

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attorney's fees and enhanced damages (twice the amount) for willful misappropriation under the DTSA. The NJTSA also does not provide for a seizure mechanism available under the DTSA, whereby one can obtain a court order on an ex parte basis — meaning with no opposition from the adverse party — directing law enforcement to seize a defendant's property. 18 U.S.C.A. § 1836.

Also, while both statutes authorize punitive damages for willful and malicious misappropriation, the DTSA caps such damages at twice the amount of actual damages. 18 U.S.C. § 1836(b)(3)(C), N.J.T.S.A. § 56:15-4.