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A Quarterly Publication of The Ohio State Bar Association
and Our Members

Issue 49 • Fall 2011

Is Your Business Prepared to Handle a Data Security Breach?

By Jane Hils Shea

Is your firm prepared to respond quickly to a data security breach and to notify as required by law? The following steps will assist you in meeting your firm's legal obligations to your customers and employees.

Plug the Hole. Immediately review your system and operations to determine how the breach occurred and make modifications to prevent further breach of your system. If a third party processor holds the data, coordinate the necessary due diligence and notification responsibilities.

Designate a Response Coordinator and Team. Involve key personnel with IT, operations, and public relations responsibilities in conducting your initial risk assessment.

Assess the Damage. Determine who was affected. The law of the state of residence of your victims and the type of data compromised will determine your notification obligations, as well as the form of the data compromised (encrypted/unencrypted, electronic/paper). The federal government requires federal

and state-chartered financial institutions to notify their customers of data security breach, so they are exempted from the requirements of Ohio law. Health care providers also may be exempted since the federal Health Information Portability and Accountability Act governs their notification requirements.

Evaluate the Impact of the Breach. Even though the data is unencrypted personal information, consider whether the breach has resulted in, or is reasonably believed to cause a material risk of, identity theft or fraud to the person or property. Ohio and some other states include this condition to the notification obligation.

Employers Now Must Post Notice of Employee Rights to Join a Union

By Patricia F. Weisberg and Eric J. Johnson

The National Labor Relations Board (NLRB) announced a new rule requiring employers to notify employees of their National Labor Relations Act (NLRA) rights, effective Jan. 12, 2012.

Application of the Rule:

The rule applies to **all** private-sector employers, including labor unions (when acting as employers), subject to the NLRA. **Even if a workplace has no union, the employer still must post the Notice because NLRA rights apply to union and non-union workers.** The rule, however, does not apply to the United States or any wholly-owned government corporation; any state or its political subdivision; agricultural, railroad, and airline employers; and small businesses over which the NLRB lacks jurisdiction due to their small volume of business and/or negligible effect on interstate commerce.

Content of the Notice:

The Notice states:

- employees have the right to organize, form, join or assist a

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Notify Promptly. Ohio law requires notification by mail or telephone to be provided as quickly as possible, but not later than 45 days following breach discovery or notification. Alternative mass notice methods may be available depending on the extent of the breach and the size of your business. Consider also whether to notify law enforcement or any regulatory body. In some cases, law enforcement may ask you to withhold disclosure or notification to avoid compromising the investigation or jeopardizing homeland security; the law permits you to comply with this request.

The notice should describe the incident generally and the type

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A new IRS Voluntary Classification Settlement Program (VCSP) will allow employers to make a minimal payment covering past payroll tax obligations rather than waiting for an IRS audit. This is part of a larger “Fresh Start” IRS initiative to help taxpayers and businesses.

VCSP is designed to increase tax compliance and reduce employer burden by providing greater certainty for employers, workers and the government. Under VCSP, eligible employers can obtain substantial relief from any past federal payroll taxes if they prospectively treat workers as employees. VCSP is available to many businesses, tax-exempt organizations and government entities that currently erroneously treat their workers as nonemployees or independent contractors.

To be eligible, an applicant must:

- Consistently have treated the workers in the past as nonemployees;
- Have filed all required 1099 forms for the workers for the previous three years; and
- Not currently be under audit by the IRS, the Department of Labor or a state agency concerning the classification of these workers.

Interested employers can apply for VCSP by filing Form 8952, Application for Voluntary Classification Settlement Program, at least 60 days before they want to begin treating the workers as employees.

Employers accepted into the program will pay an amount effectively equaling just over one percent of the wages paid to the reclassified workers for the past year. No interest or penalties will be due, and the employers will not be audited on payroll taxes related to these workers for prior years. Participating employers will, for the first three years under VCSP, be subject to a special six-year statute of limitations, rather than the three years that generally applies to payroll taxes.

See the Employment Tax pages of IRS.gov for more information.

Information provided by the Internal Revenue Service.

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of customer information that was disclosed, and include a description of corrective steps taken to prevent future breaches. Include the telephone number of a contact at the firm and remind customers to pay close attention to their bank accounts and credit reports over the next 12-24 months, and to report any incidents of suspected identity theft to the firm. Describe fraud alerts and explain how customers may place one on their

credit report; explain how to obtain a free annual credit report; and remind customers of the FTC’s online guidance about what a consumer can do to protect against identity theft, along with the FTC’s website address and toll-free number.

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union to bargain collectively to improve wages and working conditions, to discuss employment terms and conditions with other employees, to take action with other employees to improve working conditions and to strike and picket; and

- employees have the right to decline participation in any of these activities.

The Notice also must include:

- a non-exhaustive list of employer unfair labor practices and unlawful union conduct; and
- NLRB contact information and information regarding basic enforcement procedures.

The rule contains no information collection, record keeping, or reporting requirements.

Posting the Notice:

The Notice must be posted:

- conspicuously where other employee notices are posted; and
- on intranet or Internet sites, if an employer customarily uses these to communicate with employees about personnel matters.

The Notice, which must comply with the size and form requirements under the rule, is available on the NLRB website (www.nlrb.gov/poster)

Failure to Comply:

Employers failing to post the No-

tice may be found to have committed an unfair labor practice (ULP) by interfering with or attempting to restrain or coerce employees in the exercise of their NLRA rights. Failure to post the Notice in a timely manner may allow an employee more time to file ULP charges alleging violations occurring while the Notice was not posted. The NLRB will not conduct independent posting investigations except when an employee files a ULP charge alleging an employer’s failure to post the Notice.

Appeals Pending:

Several organizations, including the National Association of Manufacturers and the National Federation of Independent Business, have filed lawsuits alleging the NLRB exceeded its authority by issuing this rule. Affected businesses should monitor the progress of these cases.

What the Notice Means for Employers:

Covered employers should post the required Notice and document the date and locations of posting by Jan. 12, 2012, unless and until the courts and/or the NLRB make an announcement to the contrary.

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