



Minnesota State Bar Association, Communications Law Section

Mitigating Risk and Liability of a Data Breach

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Melissa Krasnow, VLP Law Group LLP, Minneapolis

Email: MKrasnow@vlplawgroup.com

Link to attorney biography:

<https://www.vlplawgroup.com/attorneys/melissa-krasnow/>

## SLIDES

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## STATE BREACH NOTIFICATION AND STATE DATA SECURITY LAWS

50\* states, plus the District of Columbia, Guam, Puerto Rico and Virgin Islands, have breach notification laws that require notification of a breach to affected individuals

17\*\* of the states with breach notification laws also have laws addressing security procedures

Stay tuned for developments

\*Alabama's breach notification law becomes effective June 1, 2018 and South Dakota's breach notification law becomes effective July 1, 2018

\*\* Alabama's law becomes effective June 1, 2018, Delaware's amendment to its law becomes effective April 14, 2018 and Oregon's amendment to its law becomes effective the 91st day after the date on which the 2018 regular session of the Seventy-ninth Legislative Assembly adjourns sine die

## STATE BREACH NOTIFICATION AND STATE DATA SECURITY LAWS (Con't)

Personal information is generally defined by state breach notification and state data security laws as name, plus any of:

- Social security number
- driver's license number or other government-issued identification number
- credit or debit card or account information with or without password
- medical information
- health insurance information
- biometric information
- DNA profile or
- online account information

## STATE BREACH NOTIFICATION AND STATE DATA SECURITY LAWS (Con't)

29\* state laws, plus Puerto Rico law, also require notification of a breach to a state attorney general or regulator in addition to the affected individuals

6\*\* state laws cover identity theft prevention and mitigation services

Has identity theft prevention and mitigation service provider been engaged?

\*Alabama's breach notification law becomes effective June 1, 2018 and South Dakota's breach notification law becomes effective July 1, 2018

\*\*Delaware's amendment to its law becomes effective April 14, 2018 and Oregon's amendment to its law becomes effective the 91st day after the date on which the 2018 regular session of the Seventy-ninth Legislative Assembly adjourns sine die

## STATE BREACH NOTIFICATION AND STATE DATA SECURITY LAWS (Con't)

A written information security program may be required by certain state data security laws

For additional information, please see:

<https://www.vlplawgroup.com/blog/vlp-partner-melissa-krasnow-co-authors-two-resources-thomson-reuters-practical-law-written-information-security-programs-compliance-massachusetts-data-security-regulation-2/>

## OTHER BREACH NOTIFICATION REQUIREMENTS

- Federal HIPAA / HITECH Act breach notification for covered entities and business associates regarding protected health information
- Will there be a comprehensive federal breach notification and data security law?
- Laws in other countries
- Provisions in contracts and policies

## EUROPEAN UNION'S GENERAL DATA PROTECTION REGULATION

For when the European Union's General Data Protection Regulation (GDPR) applies, please see:

<https://www.vlplawgroup.com/blog/vlp-partner-melissa-krasnow-authors-international-risk-management-institute-article-application-eus-general-data-protection-regulation/>

For a 2-page primer on personal data breach reporting under the GDPR, please see:

<https://www.vlplawgroup.com/blog/vlp-partner-melissa-krasnow-authors-primer-personal-data-breach-reporting-european-unions-general-data-protection-regulation-bloomberg-law/>

## MANDATORY FEDERAL BREACH NOTIFICATION IN CANADA

See:

<https://www.itworldcanada.com/article/canadian-mandatory-breach-notification-starts-november-1-no-regulations-yet/403558>

The final regulations are anticipated to be issued April 18, 2018

## INCIDENT RESPONSE PLANS AND TABLETOP EXERCISES (TTX)

Is there an incident response plan and / or business continuity / disaster recovery plan?

When was the last time each was tested or updated?

How frequently is each tested or updated?

What was the situation that was the subject of the testing?

What are the results of and insights from testing or updating?

Who are the members of the incident response team?

Who are external team members, including service providers?

What are incident response team member responsibilities?

## INCIDENT RESPONSE PLANS AND TABLETOP EXERCISES (TTX) (Con't)

Is there contact information for incident response team members?

What are the lines of communication?

What communications/disclosures/notifications are anticipated (e.g., internal and external)?

Prepared to work with law enforcement, regulators, industry contacts and business partners?

Is any training or awareness provided for employees, etc.?

## CYBER LIABILITY INSURANCE

Cyber liability insurance policy has the following basic coverages:

### Third Party

1. Security and privacy legal liability
2. Regulatory liability
3. Payment Card Industry (PCI) liability
4. Media liability

### First Party

1. Beach response expense
2. Business interruption
3. Data asset recovery
4. Extortion

Source: Steve Krusko, Chief Underwriting Officer, Berkley Cyber Risk Solutions, a W.R. Berkley Company

## CYBER LIABILITY INSURANCE (Con't)

Emerging coverage grants available by endorsement or within certain updated policy forms:

1. Social engineering crime loss
2. Computer crime
3. Systems failure extension for contingent/dependent business
4. Reputation loss
5. Wrongful collection
6. Affirmative grants for bodily injury or property damage resulting from a cyber event
7. Affirmative grants for General Data Protection Regulation (GDPR)
8. Integrated cyber policies
9. Expanded regulatory coverage

Source: Steve Krusko, Chief Underwriting Officer, Berkley Cyber Risk Solutions, a W.R. Berkley Company

## ADVISING THE BOARD OF DIRECTORS

National Association of Corporate Directors Cyber-Risk Oversight Handbook for Directors at <https://www.nacdonline.org/Cyber>

See also:

<https://www.vlplawgroup.com/blog/vlp-partner-melissa-krasnow-quoted-bloomberg-law-article-companies-face-securities-fraud-suits-data-breaches/>

<https://www.vlplawgroup.com/blog/vlp-partner-melissa-krasnow-quoted-directors-boards-article-director-liability-boards-hot-seat-data-breaches-illegal-sales-practices/>

## ADDITIONAL RESOURCES

<https://www.vlplawgroup.com/attorneys/melissa-krasnow/>

<https://www.irmi.com/biographies/melissa-krasnow>