Leaderschoice
INSURANCE SERVICES

Leaders News Alert

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Cyber Security

California Beefs up Data Breach Notification Law

CALIFORNIA'S DATA breach notification law has been beefed up with the enactment of legislation.

The new law requires businesses to provide free identity-theft prevention services to subjects of a breach if their personally identifiable information has been compromised. The law, which is the result of AB 1710, covers both customers as well as employees of an organization.

In other words, even if you do not maintain customer credit card or other client information, your company would be subject to the law if you have employees.

The new law, effective Jan. 1, 2015, requires a business whose data has been breached to provide, for free, one year's worth of "appropriate identity-theft protection and mitigation services" to affected California residents.

The new law will not change other parts of breach response practices as required by law.

It will require companies to do what many often do anyway after a breach. They offer identity-theft protection to help to ease the burden on their clients and alert them if in fact someone has hijacked their credit card data and is using it to make charges. It's also a way to stave off lawsuits.

One of the issues with the new law is that it requires business to provide "appropriate" identity-theft protection and mitigation services.

Such a vague description won't make it easy, as there are a number of services available to monitor the fallout from identity theft.

That said, it's likely that offering a credit monitoring and fraud resolution service should suffice.

Credit monitoring services essentially keep a lookout for any unusual charging activity, such as excessive charges, or charges in faraway locations, including overseas. These companies will typically offer fraud resolution services as well, that help remediate the fallout from identity theft.

There is a myriad of companies offering these services online. If you store credit card data, it would be wise to at least do some research ahead of time into which service you might want to use. The services vary in price and the breadth of their service.

Most of the services will monitor at least one – if not all – of the nationwide credit bureaus for suspicious activity. Some services scan the Internet to see if an affected individual's information is floating around on the web.

And some offer personal assistance with identity-theft resolution.

While the law requires that you offer affected individuals these services, it does not require that you provide it to everyone affected (in other words, you don't have to provide it to those who don't take you up on your offer). According to recent research, enrollment rates after breaches are typically no more than 10%.

Look for a service that only charges you for the individuals who actually enroll in the service.

See 'Residents' on page 2

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Human Resources

New Law Requires Anti-bullying Training

A NEW LAW that takes effect in January will require companies with 50 or more employees to provide supervisors with anti-bullying training.

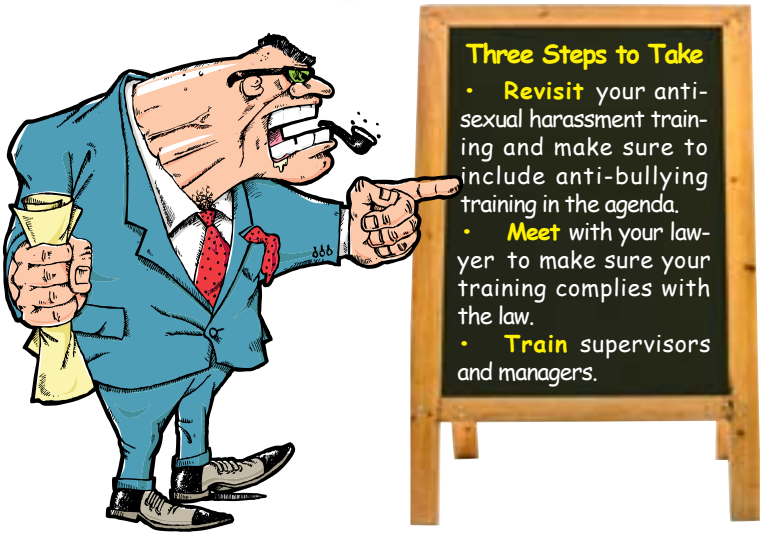
The law essentially adds to the existing requirement that employers conduct anti-sexual harassment training for supervisors every two years. The new anti-bullying training can be folded into your company's anti-sexual harassment training, under the new law.

Current law

Currently, companies with 50 or more employees must provide two hours of anti-sexual harassment training and education to supervisors within the first six months of them assuming their position as a supervisor. Refresher courses must be conducted every two years.

All training must be conducted by trainers or educators with knowledge and expertise in the subject.

New Training Action Plan



New requirements

Starting next year, employers that are required to conduct anti-sexual harassment training must also include "prevention of abusive conduct as a component of the [anti-sexual harassment] training and education."

Abusive conduct is defined as:

"Conduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests. [It] may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of a person's work performance."

That said, the law requires that such treatment must be regular or systematic and that a single incident is not enough to be considered "bullying," unless it is "especially severe or egregious."

The new law does not specify the content of the training or training materials.

Nor does it specify how much time out of the two hours of anti-sexual harassment training must be focused on bullying.

Dollars and cents

While the new law does not create a private right of action, certain instances of bullying could land you on the receiving end of a lawsuit, particularly if the bullied person is part of a protected class because of their race, gender, religion, disability, age, etc.

Theoretically, a plaintiff could argue that an employer's lack of anti-bullying training contributed to workplace harassment.

The law also uses the word "malice." This is important because in the context of punitive damages in lawsuits, malice is defined as conduct that's "intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." ❖

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Your Primary Focus Should Be California Residents

AB 1710 basics

You are required to offer identity-theft protection services only if the compromised information includes a California resident's name in combination with one of the following:

- Social Security number,
- California driver's license number, or
- California identification card number.

If credit card account numbers, medical information, health insurance information or login name and passwords have been compromised, you would not be required to provide these services.

The rest of California's data breach law remains in effect.

You would have to take certain actions if you experienced a breach that exposed a California resident's name AND their:

- Social Security number,
- California driver's license number;
- California identification card number;
- Credit card, debit card or bank account number,
- Medical information;
- Health insurance information, or
- Online login credentials.

You must notify any California resident whose unencrypted personal information above was acquired, or reasonably believed to have been acquired, by an unauthorized person.

Any person or business that is required to issue a security breach notification to more than 500 California residents must also notifiy the state attorney general. ❖

Independent Contractors

Workers' Comp Insurers Scrutinize Misclassification

MORE BUSINESSES are getting hit up for additional premiums by their insurers during audits for using independent contractors, according to a new report in the insurance trade press.

According to the *Workers' Comp Executive* trade publication, insurers are ratcheting up their scrutiny of independent contractor usage and sometimes demanding that the employer pay for workers' comp coverage for the contractor.

The issue is typically coming up when companies use independent contractors that are one-man operations. According to the report, even companies that contract out work to computer programmers and graphic designers are getting hit with bills for additional workers' comp premium during audits.

Sole proprietors of businesses are not required to carry workers' comp coverage for themselves and do not have to obtain workers' comp if they have no employees, under the California Labor Code.

The only exception to this is roofing companies with C-39 contractor classification.

All roofing contractors are required to secure workers' comp policies, even if they are sole proprietorships with no employees.

The article cites the case of a small sign and graphics company that for years has been using independent contractors to install signs.

The owner of the company told the *Workers' Comp Executive* that the issue of workers' comp coverage for these installers had been raised for the first time in his latest audit.

"I've shown [the auditor] that they're incorporated businesses, I have their liability insurance certificate – I pushed back a couple times but they said this is the way it is," he said.

One of the biggest challenges for employers is defending against a carrier's demand for additional premium. If the dispute can't be resolved through discussion, the only solution is to go to court, but the cost of hiring an attorney will often outweigh the benefits – if the employer can find an attorney to represent them.

Insurers told the trade publication that they look at a number of factors to determine whether an "independent contractor" is that, or really just an employee.

In particular, they will typically check if the contractor is in the same line of business as the policyholder, or if the contractor has their own business or federal employer identification number.

The takeaway

Review all of your independent contractor relationships to make sure that they comport with the bullet points in the blue box.

The biggest factor is typically the degree of control you exert over the work.

Besides workers' comp carriers cracking down on the way employers classify independent contractors, the federal government and the IRS have also been scrutinizing their use.

If you have concerns or questions, feel free to call our office to discuss independent contractor usage. ❖

What Auditors Look For

- If the employer retains direction and control over how the independent contractor and its employees perform their work;
- If either party terminates the contract at will;
- If a person brings other workers to perform contracted services, and if they provide a certificate of insurance for workers' comp in such cases;
- Whether the person performing services is engaged in an occupation or business distinct from that of the principal;
- Whether or not the work is a part of the regular business of the principal or alleged employer;
- Whether the principal or the worker supplies the instrumentalities, tools and place for the person doing the work;
- The alleged employee's investment in the equipment or materials required by their task or their employment of helpers;
- Whether the service rendered requires a special skill;
- The length of time for which the services are to be performed; and
- The method of payment, whether by time or by the job.

THEY'RE WATCHING: *If that independent installer you use primarily works for you, your workers' compensation insurer may start probing the relationship and eye more premiums.*

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Health Benefits

60-day Waiting Period Repealed in California

GOV. JERRY Brown has signed legislation repealing a California law that required employers in the state to offer health coverage to employees after just 60 days of hiring.

By signing the new legislation, California law will be aligned with federal law, which requires that employers offer health coverage to new employees within 90 days of hiring them.

The bill, SB 1034, was pushed through the Legislature to ease administration and compliance for multi-state employers by ensuring they have just one date to keep in mind when determining when a new hire must be enrolled in a health plan.

The law also clarifies that in California, employers may now simply default to the federal law on that matter and insurers are free to administer the employer's selected waiting period.

In other words, the availability date for the new waiting period will vary by carrier. ❖

EEOC Cracks Down on Pregnancy Discrimination

SINCE THE Equal Employment Opportunity Commission issued an advisory about pregnancy discrimination in July, the agency has been busy targeting employers it accuses of breaching the Pregnancy Discrimination Act.

Consider the following cases:

CASE 1

In September, a Wisconsin Merry Maids franchise owner agreed to pay $40,000 to settle a pregnancy discrimination suit filed by the EEOC.

The accusation: The company allegedly fired a woman because she had suffered from pregnancy-related issues at work.

CASE 2

Pet food manufacturer Triple T Foods Inc. in August settled a pregnancy discrimination case filed by the EEOC for $30,000.

The accusation: The company allegedly fired a lab technician an hour after she had informed management she was pregnant. The company said it had to let her go due to safety concerns for the mother and baby.

CASE 3

The EEOC in August sued Savi Technology Inc. after it withdrew a job offer upon learning the candidate had just given birth.

The accusation: The firm allegedly withdrew the offer for its human resources director position after the woman told the company vice president and general counsel that she had had pregnancy-related surgery after her recent birth.

Surprised? You shouldn't be. Since the end of 2011, the EEOC has filed more than 45 pregnancy discrimination lawsuits.

Said an EEOC lawyer in a recent press release:

"Too many employers have continued to deny female workers equal opportunity to earn a living for their families and themselves, simply because they are pregnant or 'showing.'

"The EEOC continues to combat such prejudices and practices as part of its efforts to educate the public about the rights of women in the workplace [and] everyone should be free from this obvious form of sex discrimination."

What you can do

Many employers erroneously make decisions to fire or remove pregnant employees from certain jobs out of misguided notions of protecting the employee or the unborn child from certain work conditions, or out of a general fear that the pregnant employee will get hurt and sue – or file a workers' comp claim.

Hiring managers and supervisors must understand that this type of thinking is no longer acceptable.

It's best to make an individual assessment of each situation and take appropriate action when necessary.

That means consulting with the employee and suggesting she ask her doctor if she should refrain from any work activities. ❖