

Law Trends

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Notice Obligations When Computers or Electronic Data Are Lost or Stolen

By John T. Landwehr

.Businesses increasingly rely upon computers and other electronic devices. While most businesses have adopted policies and practices to secure the data contained on these devices, recent amendments to Ohio law impose strict reporting requirements in the event of loss or theft of a business computer or breach of a computer network. Under the new law, your business may have a legal obligation to report the loss or breach to everyone whose name was stored on the computer or network.

Effective February 17, 2006, businesses, as well as state and local agencies, must monitor and respond to unauthorized access and acquisition of electronic data that compromises the confidentiality of personal information or which risks identity theft or fraud. Examples of personal data giving rise to the reporting obligation include: employment and payroll records, information obtained from consumer reporting agencies, individual financial records, background checks, medical records and any records containing Social Security Numbers associated with names.

The new notification obligation is triggered when there has been a breach of the security of your lost computer or network. A breach occurs if there is unauthorized access to and acquisition of data which has, or is reasonably believed to cause, a material risk of identity theft or other fraud. If a device is lost or stolen, and is presumably in unauthorized hands, a breach of security has occurred. If the data on the computer is not encrypted and access is not protected (or is only protected by a simple start-up password), you should presume, until the law is clarified, that the data has been accessed and acquired. Access and acquisition need not be presumed if the data is encrypted or portions of it are redacted, in which case you do not have a notification obligation.

The law requiring notification is also only applicable if the lost or breached device contains an individual's name *and* Social Security Number, driver's license number, state identification card number or a credit or debit card number associated with the named person. In the case of public entities, reporting may also be required if the device contained certain descriptions of a person which can be retrieved using the person's name.

If your business has a security breach and personally identifiable information is at risk, you must give notice to the persons whose information has been compromised as quickly as possible, but not later than 45 days following discovery of the breach. If

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Main Office:

One SeaGate, 24th Floor
P. O. Box 10032
Toledo, Ohio 43699-0032
Telephone: 419-241-6000
Fax: 419-247-1777

Columbus Office:

100 East Broad St., Ste. 1300
Columbus, Ohio 43215
Telephone: 614-280-1770
Fax: 614-280-1777

Findlay Office:

725 South Main St.
Findlay, Ohio 45840
Telephone: 419-424-5847
Fax: 419-424-9860

Web Site:

www.eastmansmith.com

timely notice is not given, the state Attorney General may pursue fines of between \$1,000.00 and \$10,000.00 for each day you fail to comply. (The statute does not specify whether the violations are per breach or per person whose privacy is potentially affected.) Notification must be made by written, electronic or telephonic means. Be sure to keep a record of the notice.

The new law is not device-specific. While laptop computers are the most obvious targets for data theft or loss, the proliferation of other computer devices, including “synched” personal digital assistants, Blackberries, Palms, etc., places individual information at risk in ways not usually contemplated. Further, the widespread use of memory sticks – and even iPods – needs to be considered when evaluating whether there has been unauthorized access to, acquisition of or loss of computerized data giving rise to reporting obligations.

For more information on this new law, please contact Mr. Landwehr at 419-241-6000. Mr. Landwehr is a member of the Firm. His practice is concentrated on employment-related litigation and advice. He is listed in Best Lawyers in America.