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"Tip of the Month"

General Data Protection Regulation (GDPR) Requirements – 2019

If you have recently seen notices of new data privacy policies and updates, these are probably related to the GDPR. The European Union's GDPR took effect May 25, 2018. The GDPR impacts businesses globally because of its extremely broad reach that seeks to hold all businesses accountable for the use and protection of data belonging to EU citizens.

The GDPR applies to businesses that offer goods or services to people in the EU or that monitor the behavior of people in the EU, regardless of whether payment is required. The GDPR applies to both controllers (whomever determines why and how personal data is being collected) and processers (whomever processes the data on behalf of the controller).

The GDPR regulates "personal data" defined as any information related to a natural person or data subject that can be used directly or indirectly to identify that person. Personal data includes a name, photo, email address, bank details, medical information, GPS location data, and IP address. The GDPR significantly increases data privacy obligations and increases penalties. Fines can be as high as the greater of 20 million euros or four percent of annual worldwide revenue. The new rules include:

Consent: Controllers and processors must be transparent with how information is used and usually must obtain consent from the individual. The request for consent must be in clear, plain language and cannot simply ask an individual to accept a privacy policy that is not provided.

Rectification/Erasure of Data: The GDPR provides rights to individuals to access their personal data and fix or erase inaccurate data.

Assessments: Controllers must conduct data protection impact assessments, involving routine evaluation of the potential impact of lost or diverted data.

Breach Notification: The GDPR mandates breach notification within 72 hours of awareness of the breach if the breach is likely to result in a risk for the rights and freedoms of individuals.

EU residents can enforce GDPR protections by filing a complaint with authorities in each EU member state or by filing a lawsuit if the authority fails to address the complaint properly. Lawsuits may include class actions.

The U.S. does not yet have a federal law regulating all collection, use and disclosure of personally identifiable information ("PII"), but some laws such as the Health Insurance Portability and Accountability Act ("HIPAA") apply to the use and disclosure of PII. All 50 U.S. states have data protection laws, mostly for cyber breaches. A global business might best have a privacy policy that meets GDPR requirements to stay on the safe side.

If you have questions about the GDPR, the attorneys at Mesmer & Deleault, PLLC able and ready to help. Call us today at 603-668-1971, or contact us by email at mailbox @ biz-patlaw.com.

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