

Data Privacy and Cybersecurity Challenges for Employers Resulting From COVID-19



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Dr. Jared DeMott



- Founder of VDA Labs, a full-scope cybersecurity company
- Finalist in Microsoft's BlueHat prize contest, which helped make Microsoft clients more secure
- Won three Defcon "capture-the-flag" teams and speaks at numerous conferences: RSA, DerbyCon, ToorCon, GrrCon, HITB, BlackHat, US Military Academy
- Pluralsight author


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Kelly Hollingsworth



- Attorney who focuses on general business and information technology industries
- Expert in cloud-based solutions and data privacy issues
- Helps clients with cybersecurity and data privacy concerns


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Norbert Kugele

- Attorney who specializes in employee benefits and privacy and information security law
- Helps organizations understand and comply with state, federal and international privacy and information security laws, including HIPAA, FTC, consumer privacy requirements and breach notification laws
- Counsels organizations on responding to security breach incidents, develops privacy policies and counsels on the EU's General Data Protection Regulations and contracting for cross-border data transfers

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Nate Steed

- Attorney who focuses on technology and intellectual property law, health law and privacy and information security law
- Helps organizations in the acquisition and use of software and hardware and the internet of things
- Helps clients maintain compliance with state and federal privacy and information security laws

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Overview

- Cybersecurity and data protection
- Legal compliance considerations
- Employee privacy
- Third party contracts



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Cybersecurity

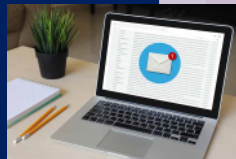
- Cyber threats come in many different forms
- Concerns are one the rise with more workforce members working remotely



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COVID-related Cyber Threats

- Cybersecurity incidents have increased since the start of the pandemic
- Threats include:
 - Fake CDC emails
 - Phishing emails and texts
 - Malware distribution
 - Social engineering



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Data Security Best Practices

- Remain Diligent: Cyber criminals don't let a good opportunity go to waste
- Keep employees informed
- Encourage reporting
- Don't click that link!



Data Security Best Practices


- Update (or develop) data privacy and security policies and procedures
- Train and retrain employees
- Select service providers
 - Insurance
 - Legal
 - Forensics
 - Public Relations



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Data Security Best Practices

- Ensure programs and operating systems are up to date
- Invest in antivirus solution
- Guard the gates
 - Secure your home network
 - Avoid public Wi-Fi (or use VPN)



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Data Security Best Practices

- Backup and encrypt your data
- Implement two-factor authentication
- Get rid of unneeded information (securely)
- Be mindful of your space
 - Lock devices
 - Take calls in private



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Legal Compliance Considerations



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Legal Compliance Considerations

- ADA
- FMLA
- GINA
- HIPAA
- GDPR
- CCPA
- Other State Laws



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Legal Compliance Considerations

- ADA, FMLA, and GINA limit what information can be requested and how it must be treated
- Inquiries should be limited to employees who pose a "direct threat" to the health and safety of themselves or others in the workplace
- GINA prevents asking about family members with COVID-19
- ADA and FMLA require maintaining COVID-19 medical information separate from personnel file
- Must limit disclosure of information as much as possible

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Does HIPAA apply?

HIPAA applies	HIPAA does not apply
<ul style="list-style-type: none">Health information obtained by an employer through its capacity as a health plan	<ul style="list-style-type: none">Employer receives information in its capacity as an employer

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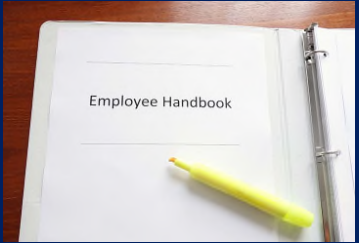
Legal Compliance Considerations

- GDPR
 - Transparency
 - Limited scope
 - Adequate security measures
- CCPA
 - No delay in enforcement
 - Data security is important
- Other state law implications
 - Notice and consent requirements
 - Breach notification considerations



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Employee Privacy



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Employee Privacy

While Working from Home

- Remind employees of the policies and privacy expectations
- Clearly communicate what information is subject to monitoring

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Employee Privacy

For On Site Workers

Employee Privacy Employee Safety

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Employee Screenings

- Required employee disclosures
 1. Employee tests positive for COVID-19
 2. Employee experiencing COVID-19-related symptoms
 3. Employee has been in contact with someone who has tested positive
 4. International travel
- Adopt and implement a standard questionnaire or checklist for all employees
- Employee infected/exposed should be required to stay home (can work remotely if that's possible).

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Confidentiality of Screening Data

- Train individuals collecting the data.
 - Confidentiality during screening process
 - Confidentiality of information learned
- Maintain separate from personnel file.
- Restrict access to the screening data
- If vendor involved, have appropriate contractual provisions

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Employee Screenings & Disclosures

- **What if an employee tests positive for COVID-19?**
 - Contact tracing: Ask the employee to provide a list of individuals that the employee has come in contact with in the last 14 days
 - Disclose to other employees that an employee they may have come in contact with has tested positive
 - Maintain confidentiality: Do not disclose the employee's identity or symptoms, without the infected employee's voluntary consent
 - Document information in the employee's medical file (separate from personnel file)
 - May disclose the name of the employee to a public health agency

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More Privacy Best Practices

- Document details of screening data collection activity
- Communicate policies openly and frequently
- Obtain written permission before disclosing employee identity or symptoms to others (may be required in some states)
- Establish data retention time frame

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Third Party Contracts



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Third Party Contracts

- Proliferation of service providers
- Timing issues
- Negotiation issues




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Third Party Contracts



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Third Party Contracts



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Third Party Contracts

- Normal considerations:
 - Confidentiality and security
 - Data backup
 - Offshoring
 - Accessibility & return
 - Audit
 - Data breach liability
 - Liability limits



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Third Party Contracts

- Normal considerations:
 - Accessibility & return



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Third Party Contracts

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Questions?




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Additional WNJ Resources

- WNJ COVID-19 Resource Center:
<https://www.wnj.com/About-Us/COVID-19-Updates>
- Subscribe to legal updates by emailing:
covid@wnj.com


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Conclusion



COVID-19

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