

Massachusetts Privacy Law

February 17, 2010

Massachusetts has enacted new privacy regulations requiring that entities holding personal information of Massachusetts residents take certain steps, including the development of a written information security plan, to protect such information. These new privacy regulations take effect March 1, 2010. Although most life science companies do not engage in commercial transaction with individual consumers, the requirements pick up information from employees and consultants that life science companies use for payroll, direct deposit and/or tax purposes. Specifically, personal information includes a Massachusetts resident's first name and last name or first initial and last name in combination with such resident's social security number, driver's license number or financial account number.

The new regulations require that if a company uses a third party service provider that handles personal information of Massachusetts residents (e.g., outsourced payroll function), that the contract with such service provider contain provisions requiring the service provider to implement and maintain appropriate measures for protecting personal information. This requirement applies to all new contracts entered into on or after March 1, 2010. Contracts in place prior to March 1st need to comply with this requirement by February 29, 2012. Below is sample language that may be used in contracts to comply with this new requirement:

Massachusetts Personal Information Security Regulations Compliance. Massachusetts Personal Information Security Regulations, 201 Code of Mass. Regs. 17.00 et seq. (the "Personal Information Regulations") mandate procedures to safeguard the Personal Information (as defined in the Personal Information Regulations) of Massachusetts residents. Because [INSERT VENDOR NAME] may have access to the Personal Information of {YOUR COMPANY}'s employees, contractors, consultants, business associates, or customers who are Massachusetts residents ("Protected Information"), the Personal Information Regulations require [INSERT VENDOR NAME] to certify compliance with the Personal Information Regulations. Accordingly, [INSERT VENDOR NAME] agrees that, as long as it has access to or maintains copies of Protected Information it will: (a) comply with the Personal Information Regulations with respect to the Protected Information, (b) promptly notify [YOUR COMPANY] in writing of any suspected or actual data breach involving Protected Information, and (c) cooperate with [YOUR COMPANY] to investigate and remediate any suspected or actual data breach involving Protected Information.

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Because of the generality of this update, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations.