

CLIENT ALERT: AUGUST 26, 2009

MASSACHUSETTS OFFICE OF CONSUMER AFFAIRS AGAIN REVISES AND DELAYS ENFORCEMENT OF THE DATA SECURITY REGULATIONS – NEW COMPLIANCE DEADLINE IS MARCH 1, 2010.

On August 17, 2009, the Massachusetts Office of Consumer Affairs and Business Regulation (“Consumer Affairs”) issued a [press release](#) announcing additional changes to the data security regulations requiring all entities that own or license “personal information” to create and implement a comprehensive plan concerning data retention, storage, security, and destruction. Changes in the [revised regulations](#) (201 CMR 17.00 et seq.) include the following:

1. The compliance deadline has been pushed back from January 1, 2010, to March 1, 2010.
2. Emphasis is placed on tailoring the plan to the size, scope and type of business. In other words, Consumer Affairs has formally acknowledged, in the regulatory text itself, that certain businesses with more limited resources or a smaller amount of data containing personal information will be held to a somewhat different standard than major corporations owning or licensing extensive amounts of personal information.
3. A provision included in the original regulations required that contracts between a data owner and an outside vendor contain a clause indicating the vendor’s compliance with the data security regulations. The first set of revisions to the regulations omitted this contractual requirement. This latest set of revisions reinstates the requirement.
4. The technological safeguards (such as secure user identification protocols and access control measures) are now required only “to the extent technically feasible”. Encryption of data transmitted wirelessly has always been a requirement only to the extent technically feasible.
5. The new definition of the term “owns or licenses” explicitly includes personal information maintained in connection with employment. This draws attention to the fact that all employers that maintain personnel files, including employees’ names and Social Security numbers, are subject to the data security regulations.

For additional information about the data security regulations and the relevant portions of the Massachusetts General Laws, please consult our [prior client alerts](#) on this topic. Please contact Attorney Becca Rausch at rtausch@kb-law.com with any questions.