

# MSF CLIENT ALERT

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## Data Security Requirements of New York's SHIELD Act Effective as of March 21, 2020

*The data security amendments to the New York Stop Hacks and Improve Electronic Data Security Act (the "SHIELD Act" or "Act") went into effect as of March 21, 2020. The Act applies to any person or business that owns or licenses Private Information (as defined by the Act) of a New York resident, whether or not such individual or business operates or conducts business in New York.*

If subject to the Act, a business must develop, implement and maintain reasonable safeguards to protect the security, confidentiality and integrity of the Private Information of New York residents.

In its swift and public inquiry into the video conferencing technology company, Zoom, earlier this month the New York Attorney General's Office has signaled regulators are keen to ensure businesses are complying with privacy and data security laws in these trying times. It is therefore advisable that businesses address internal data security compliance as soon as possible.

### **What Are Reasonable Safeguards?**

The Act sets forth the criterion of a data security program which includes reasonable administrative, technical and physical safeguards to protect the Private Information of New York residents, including:

- Development, implantation and ongoing maintenance of appropriate risk assessment and management programs
- Employee training practices and procedures
- Assessment of risks in network and software design, information processing, data transmission and storage

- Attack detection and response mechanisms
- Testing and monitoring procedures
- Data disposal
- Prevention of unauthorized access at each stage of the data life cycle (e.g. Collection, storage, transportation, destruction, disposal).

### **What About Small Businesses?**

Requirements for small business compliance are slightly less burdensome. A small business security program would be compliant if it contains reasonable administrative, technical and physical safeguards that are appropriate for the size and complexity of the small business, the nature and scope of the small business's activities, and the sensitivity of the personal information the small business collects from or about consumers. A small business is defined as one with less than 50 employees, less than three million dollars in gross annual revenue for the last three years, or less than five million dollars in assets.

### **Risks of Non-Compliance.**

While the Act specifically states there is no private right of action, the New York Attorney General may bring claims against entities and individuals who fail to comply

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with the law to enjoin the alleged activity and assess civil penalties under the New York Consumer Protection laws, which provides damages of up to \$5,000 for each violation. It is worth noting that it remains to be seen what would qualify as a “violation” for purposes of assessing damages under this statute.

## ***Curious About Breach Notification Requirements?***

With the rise of COVID-19-related malware and ransomware attacks and increase in telework vulnerabilities as employees use personal devices with varying levels of security, the risk of unauthorized access

of the Private Information of New York residents is also on the rise. In the event a business falls victim to such an attack or vulnerability which exposes Private Information of New York residents to unauthorized access, the Act includes specific data breach notifications that took effect on October 23, 2019. See our earlier Client Alert <https://www.meisterseelig.com/2134-2/> for more information on the data breach notifications and the Attorney General’s enforcement capabilities.

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For more information or if you have any questions about how this new development may affect your business, please contact Katherine E. Lewis of Meister Seelig & Fein, LLP by email at [kel@msf-law.com](mailto:kel@msf-law.com) or by phone at (646) 539-3730.



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