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## CLIENT UPDATE



### NEW YORK SHIELD ACT – and yet another privacy law...

12/03/2020

Earlier this year, New York's Legislature enacted and Governor Andrew Cuomo signed into law the "Stop Hacks and Improve Electronic Data Security Act," also known as the "SHIELD" Act.

Below is a quick summary with practical recommendations as to how to comply. You should read this if you collect, store or use personal information of New York residents.

**1. Deadline to comply:** March 21, 2020

**2. Applies to:** any person or business holding personal information of New York residents. Therefore, in practice, many companies are likely to be caught by the SHIELD Act.

**3. Purposes:**

- Updates New York's data breach notification law.
- Broadens the scope of information covered under the SHIELD Act and expands the definition of "Private Information".
- Updates the notification requirements when there has been a security breach.

- Broadens the definition of a “security breach” to include an unauthorized person gaining access to information, and not only illegal acquisition of information (for example, information that was viewed, communicated with, or altered without valid authorization or by an unauthorized person).
- Requires the implementation of certain security measures.
- Provides standards tailored to the size of a business, and provides protections from liability for certain entities.

#### 4. How to comply. Immediate action items:

- **Map** your data and information subject to the SHIELD Act. You should know what data and databases are affected by the Act.
- **Implement** the required reasonable administrative, technical and physical **safeguards**. If you already comply with the GDPR, compliance with these requirements will likely prove easy in practice.
- **Update** your **data breach notification policy**. The SHIELD Act requires performance of certain notifications in the event of a “security breach”. Therefore, your data breach notification policy or protocol should reflect these requirements.

**5. Consequences of non-compliance:** these include, amongst other, civil penalties of up to \$250,000 (which the New York State Attorney General can seek). However, the SHIELD Act creates no private right of action for any violations of the Act.

**6. Important clarification:** Do not confuse the SHIELD Act with the “Privacy Shield” regime/framework. Despite the fact that both regimes use the term “SHIELD”, they are two different things. The SHIELD Act is a New York act focusing on security and data breach notification requirements applicable to the data of New York Residents. The privacy shield is a mechanism for transferring personal data originating in the European Union and the European Economic Area to the United States.

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