

Buchalter

California Consumer Privacy Act

Tracy A. Warren

Shareholder

twarren@buchalter.com

- **FOR HR PROFESSIONALS ONLY!**
 - GET 50% OFF ALL ATHLETIC APPAREL, CLOTHING AND ELECTRONICS.
 - JUST TEXT YOUR SOCIAL SECURITY NUMBERS NOW TO 858-555-2000.
 - WHEN YOU PRESS 'SEND', YOU WILL ALSO BE SHARING WITH OTHERS YOUR PERSONAL DATA WHICH IS IN KEEPING WITH THE SPIRIT OF 'GIVING' OVER THE HOLIDAYS.



Biggest Data Breaches Updated 2019

Yahoo - 3 billion

Aadhaar - 1.1 billion

Verifications.io - 763 million

Marriott/Starwood - 500 million

Adult Friend Finder - 412.2 million

MySpace - 360 million

Exactis - 340 million

Twitter - 330 million

NetEase - 234 million

LinkedIn - 165 million

*Source: UpGuard

Biggest Data Breaches Updated 2019

Adobe - 152 million

Equifax - 148 million

eBay - 145 million

Evite - 101 million

Quora - 100 million

Facebook - 87 million

Dailymotion - 85 million

Dropbox - 69 million

tumblr - 66 million

*Source: UpGuard

FACEBOOK CLASS ACTION DATA BREACH



- * Last week a California Federal Judge certified a class of Facebook users who claimed Facebook's negligence led to a data breach that affected 29 million users.
- * Facebook's "repetitive losses of users' privacy supplies a long-term need for supervision" and an internal 'data breach monitor', according to the Judge.
- * Judge tells Facebook attorneys he will allow "bone crushing" discovery because users don't know how badly they were harmed.
- * September 2018 hacking – "View As" feature — which lets users see how their profiles appear to the public or friends — let hackers access tens of millions of accounts.

What is a Data Breach?

A **data breach** is an incident where information is stolen or taken from a system without the knowledge or authorization of the system's owner.

Here's an URGENT email from me

Hi HR Professional...

You are so great at your job, I have decided to reward you with a holiday bonus of \$1,000.

Just click here:

Bank of San Diego Notification!
Hello Black Friday consumer...
To verify your purchase, reenter
your credit card information here:

CREDIT CARD INFORMATION

Card Number *



Security Code *

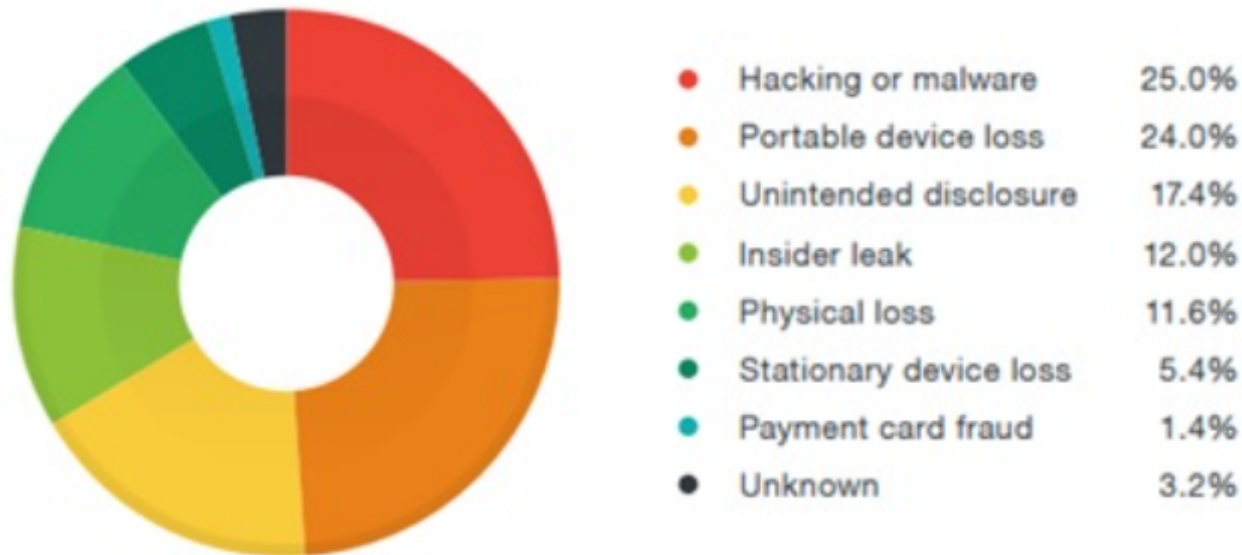


Expiration Date *

-month- ▾ -year- ▾

BILLING NAME AND ADDRESS

How does this happen?



Source: Trend Micro, Inc.

What Information is Stolen?

- * Financial
- * Personal
- * Internet Use
- * Consumer
- * Trade Secret



Biggest Class Action Data Breach Settlements

* **Equifax Reaches \$1.4B Data Breach Settlement in Consumer Class Action (July 2019)**

The deal includes \$77.5 million in attorney fees.

* **Anthem** - \$115 Million Dollar Settlement (June 2017)

* **Target**: \$28.5 million (\$18.5M for states, \$10M for consumers)

* **Home Depot** (affected 50 million cardholders): \$19.5 million settlement

* **Sony** (PlayStation network breach): \$15 million

CCPA Applies To:

For profit business that:

- (1) Does business in California(i.e. online);
- (2) Collects personal information of consumers/employees;
- (3) And satisfies any of the following:



CCPA Applies To:



- *Annual Gross Revenue over \$25 Million; OR
- *Annually receives/sells/shares personal information about 50,000 or more California residents or households or 50,000 devices, OR
- *Earns 50% or more of their annual revenue from selling personal consumer information.

What About Non-Profits or Subsidiaries?

*Only Applies if Controlled by AND
Shares Common Branding With a
Covered Business:



Bank of America

The Non-Profit of Bank of America

Control?

- *Ownership;
- *Power to vote more than 50% of shares or elects the majority of directors;
- *Power to exercise a controlling influence over entity management



CCPA Applies Here:

- *Collect and track consumer information about 50,000 or more devices that were used to access your website;
- *Received personal information of 50,000 or more CA based employees, job applicants or residents



How Personal is Personal Information?

Information about:



Job Applicants

Employees (race, age, gender, etc.)

Family Members of Employees

Dependents

Professional or Employment Related
Information (training, pay stubs, workers comp.)

Internet/Network/Usage/Activity/
Geolocation Activity/Biometric Information

Personal Information Does Not Include AB 1355

*Deidentified Information

Redaction of name/sex/birthdate/social security number;

*Aggregate Consumer Information (i.e. EEO-1 report/pay equity report)

Reports with information about groups of employees with identifying information removed.



Consumer Rights Under CCPA



- *Business that collects consumer's PI must inform at or before the point of collection:
 - *Categories of PI to be collected;
 - *Purposes for which information will be used;
 - *Disclose consumer rights in online or internet policy;
 - *Update disclosures every 12 months.

Taking Consumer Requests

- *Categories or pieces of personal information businesses collected;
- *Sources of what PI was collected;
- *Categories of PI sold to third parties;
- *Categories of PI disclosed for business reasons;
- *Categories of third parties to whom PI was sold;
- *Business or commercial purpose of PI.



***Can Opt Out!**

Timeline for Compliance

AB 25 - Covered Businesses

Have until January 1, 2021 to comply with respect to personal information used in the employee relationship.

Now, need not honor requests for access, erasure, or opt-out from job applicants, employees, contractors, and agents with respect to personal information collected and used solely for employment.

Timeline Exceptions (Do it Now)

(1) reasonable security measures to safeguard data;

(2) disclosure/notices of PI collected about job applicants/employees and the business purpose for which information is used.



Reasonable Security Measures?

Gather data map for:

- (1) all collected PI;
- (2) location of information;
- (3) identify who has access to PI;
- (4) shared information partners;
- (5) business purposes for information.



External Security Audit – Good Idea!

Hire a security auditing firm to review security measures.

Why? Individual or class action recovery of \$100 to \$750 per consumer per data breach or actual damages whichever is greater; plus injunctive relief or whatever relief the court deems proper. Need not show harm!



January 1, 2020 Deadline

Prepare the CCPA-compliant privacy notices:

*Must provide notice of the categories of personal information that are collected by the employer, as well as the purposes for which that data will be used.

*Identify a mechanism for providing notice to employees, job applicants, and third-party contractors, and ensure that the employer's notices are made available to those individuals by January 1, 2020.

Categories of Information in the Disclosure

- *Pre-Hire Documents (applications, resumes, background checks)

- *Pay Data

- *Termination Documents



Purpose of Use of Information

- *To process payroll;
- *To manage employee performance;
- *To comply with federal and state law;
- *To administer health insurance benefits.

Covered employees must include in the disclosure all uses of employee PI in the disclosure or prohibited from using!

AB 1355 Temporary Exemption

Businesses engaged in B2B transactions

PI does NOT include:

Personal information reflecting a written or verbal communication or a transaction between the business and the consumer, where the consumer is a natural person who is acting as an employee, owner, director, officer, or contractor of a company, partnership, sole proprietorship, nonprofit, or....

AB 1355 Temporary Exemption

Businesses engaged in B2B transactions

PI does NOT include:

...government agency and whose communications or transaction with the business occur solely within the context of the business conducting due diligence regarding, or providing or receiving a product or service to or from such company, partnership, sole proprietorship, nonprofit or government agency until January 1, 2021.

Ready for 2020!



1. DATA MAP
EMPLOYEE DATA

2. CONDUCT AN EXTERNAL SECURITY AUDIT

3. DRAFT DISCLOSURES FOR JOB APPLICANTS AND
EMPLOYEES

TRACY A. WARREN

619-219-5360

TWARREN@BUCHALTER.COM