VIRGINIA
EMPLOYMENT LAW LETTER
Part of your Virginia Employment Law Service

March 2017

How to protect against and respond to cyberattacks, part 1

by Milton Whitfield and Jayna Genti
DimuroGinsberg PC

Since January 2016, Virginia has experienced roughly one cyberattack attack every four seconds. In a 2016 Cost of Data Breach Study, the Ponemon Institute, which conducts independent research on data protection, found that malicious or criminal attacks continue to be the primary cause of data breaches nationwide. According to the study, 50% of cyberattack incidents involved a malicious or criminal attack, 23% were caused by negligent employees, and 27% involved system glitches that included both IT and business process failures. (The study is available at https://securityintelligence.com/media/2016-cost-data-breach-study/.)

To help you deal with this very real concern for all Virginia businesses and governmental entities, we will explore, in this article and in articles that will appear in the next three issues of Virginia Employment Law Letter, (1) the financial costs of data breaches and steps you can take to improve your data protection procedures, (2) Virginia's legal requirements for notifying consumers and other affected individuals of a data breach, (3) the federal laws that may be implicated by a data breach and the legal avenues of redress you have against the perpetrators, and (4) the recent cybersecurity initiatives undertaken by Governor Terry McAuliffe. First, let's examine the monetary impact a data breach may inflict on your operations.

Costs of a data breach

The Ponemon Institute's study documents not only the prevalence of data breaches and their causes but also the monetary consequences of a breach. According to the study, the increase in the costs associated with data breaches is due, in large measure, to three types of expenditures:

- **Notification costs.** These include the costs associated with creating a contact database, determining all regulatory requirements, engaging outside experts, absorbing postal expenditures, making secondary mail contacts, and setting up inbound communications.
- **Post data breach costs.** These costs encompass help desk activities, inbound communications, special investigative activities, remediation activities, legal expenditures, product discounts, identity protection services, and regulatory interventions.
- **Lost business costs.** These costs arise from the abnormal turnover of customers, increased customer acquisition activities, loss in reputation, and diminished goodwill.

Mitigating the damage

Fortunately, you can take steps to mitigate the harm from cyberattacks. The Ponemon Institute found that employers can reduce the cost of data breaches by instituting improvements in data governance programs and investing in certain data loss-prevention controls and activities. As part of your data governance program, you should consider:

1. Implementing an incident response plan;
2. Appointing a chief information security officer (CISO);
3. Creating employee training and awareness programs; and
4. Developing a business continuity management strategy.

The cost of a data breach can be reduced when you share information about cyberthreats and cyberattacks with other businesses. Installing data loss-prevention technologies, such as encryption and endpoint security solutions, can help you prevent data breaches in the first place.

Bottom line

If your preventive measures aren't successful and a data breach occurs at your workplace, you have a number of legal obligations to notify the affected individuals, particularly under Virginia law. Next month, we will explore what those obligations entail.

Past articles on cybersecurity that have appeared in Virginia Employment Law Letter include "Feeling insecure? Understand notice requirements under state security breach laws" on pg. 5 of the December 2014 issue and "Hackers gonna hack: Know the security threats facing your business" on pg. 6 of our July 2015 issue.

Milton Whitfield and Jayna Genti are attorneys with DiMuroGinsberg PC and contributors to Virginia Employment Law Letter. They may be reached at mwhitfield@dimuro.com or jgenti@dimuro.com.