

DATA SECURITY CLE OUTLINE – January, 2017 CTLC Meeting – Prepared by Keith Kanouse Jr.

In today's electronic age, data security is not just a concern for technology and Fortune 500 companies. Each company that collects, processes, shares, stores, or disposes of personal data must ensure that these data are protected with the appropriate security measures. Extra regulatory attention applies to those in the health care and financial fields.

Legal liability exposure occurs from:

- regulatory industry specific actions (HIPAA, PCI)
- regulatory general actions (FTC charged Wyndham unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, related to their data security) and State AG.
- contractual breach
- individual and class action torts

Below are all controls that organizations dealing with personal data (i.e. 'all of them') should have:

- Security and Privacy Policies & Procedures
- System Inventory
- Security & Privacy Training Program
- Physical Security Plan
- User Access Management
- Human Resources Controls
- Contract Management, Business Associate Agreements, PCI Agreements
- Business Impact Analysis (BIA / BCP) for Business Continuity
- Disaster Recovery Planning
- Encryption Implementation
- Patch Management Program
- Change Management Program
- Logging, Monitoring, and Reviews
- Backups and Restoration

The goal of the CLE is not as much to highlight case law or legal procedure, but rather to understand the above controls and any gaps as it pertains to your current clients, prospective clients, and own law firm. Instead of asking your client about their "data security", it may be helpful to get a bit more specific on the controls. Chances are there are gaps. For these gaps, you as an attorney would not be the resource to close the gaps, but rather would look to the legal resource for the overall control mitigation effort. Typical efforts span many resources, many months/years, and even outside risk assessment / IT consulting resources. It will be a proactive conversation to have with your clients/prospects that they will appreciate and will likely lead to subsequent legal work for you and your firm.