

Guide to Maryland's New Data Privacy Laws for Business Owners

Sarah Sawyer: [00:00:00] Welcome to this week's OK at Work with myself, Sarah Sawyer, my colleague Russell Berger, and today our esteemed guest, our colleague Stephenie Yeung, from our Intellectual Property and Privacy Law group.

She's coming to us from Philadelphia today and joining us on OK at Work to talk about some privacy and data protection laws that are relevant to business owners right now, in particular in Maryland. There is a law that is coming into effect October 1st. It is a data protection, privacy laws, Stephenie's going to be a little more technical about this when she speaks about it, than me since this is her practice area. But there's a slew of laws coming into effect October 1st. This is one of them, and this is one that business owners should definitely be paying attention to.

So Stephenie high level, this law is coming into effect on October 1st. What is it?

Stephenie Yeung: It's called the Maryland Online Data Privacy Act. And it really [00:01:00] targets, regulations on how businesses collect, process, share, consumer personal data.

Sarah Sawyer: Great.

Stephenie Yeung: And it's joining a group of about 19 other state laws that have been enacted to regulate personal data, how businesses collect, process and treat personal data across the country. It's a bit of a patchwork. Every state has its own standards and Maryland represents a second generation. There are some, differences between Maryland's Law, which was enacted last year and as Sarah said, goes into effect on October 1st with sort of the first generation that we tend to think of, which is California and Virginia.

Russell Berger: So Stephenie let's say, I'm a business owner. I've got a brick and mortar operation in Maryland, I've done online presence that crosses state lines. What should I be doing? What questions should I be asking myself?

Stephenie Yeung: Well, if you haven't had to deal with sort of other states [00:02:00] privacy laws on your website, and chances are maybe you have there are a couple of differences with the Maryland law.

First of all, we should note that it has a lower threshold of application. If you collect the personal data of 35,000 Maryland residents then you would have to comply with this law. Even if you are a nonprofit organization, this law applies to certain nonprofit organizations.

Unless your nonprofits organization is focused solely on law enforcement. But that leaves a lot of them that needs to comply.

Russell Berger: Yeah. So what does that mean? 35,000 data? Most businesses don't have 35,000 customers. So from that standpoint, probably not a problem. But what, in the context of a website, what does that really mean?

Stephenie Yeung: Right, well, it depends what tracking technologies you're using on your website. Are you tracking visitors to your website with cookies or other tracking pixels? Are they

collecting IP addresses? We see IP addresses are certainly [00:03:00] considered personal data in Europe and most of our approach in the states have been that IP addresses are considered personal data as well, so that actually, the 35,000 is not that high of a threshold when you count website traffic.

Companies will need to look at that to see if they fall within that threshold.

Russell Berger: So it seems to me like if I were a business and I'm getting, that level of traffic on my website that I either need to figure out how to make my website compliant or I need to change what I gather through my website.

We're not talking any specific, example here, but what goes into that calculus from a business owner standpoint?

Stephenie Yeung: Well, the business owner really needs to, if you make the determination that you have that kind of volume you really need to look at sort of your overall data collection and processing. What you're actually doing.

Because the Maryland law, in a way that's different from other laws requires a data minimization piece. What that [00:04:00] means really is you have to tie the collection of personal data to the product or services that you're providing to the customer, that the customer has requested.

Other laws have basically said, you disclose certain purposes to your customer even purposes that are for your own business purpose, right? Your marketing analysis your broad prevention, whatever it is. And then it's generally okay for you to collect and process that data.

Maryland is more strict than that where you have to actually tie the collection practices to providing a particular product or service.

Sarah Sawyer: So what you're saying those disclosures and those are things that I'm sure myself and everyone watching this video have seen, which is those things that pop up and tell you, Hey, I'm tracking this and are you okay with me tracking this?

Here's where they're tracking.

Stephenie Yeung: Usually you get a truncate it, like cookie banner that says you can opt out of. Some of them still just say, okay, or accept and doesn't really give a [00:05:00] choice. And that's really not best practices anymore. Or you get a cookie banner that gives you a little bit of description and then links to the privacy policy and in terms of use and it would be in the privacy policy that you would disclose your practices and businesses do have to update their privacy policies under the Maryland Act to make sure that they disclose their practices in collecting personal data and particular in collecting sensitive personal data.

Sarah Sawyer: Some of those popups are already happening and some that stuff in place. Maybe 'cause as Russell said in his example, maybe you crossed with their state lines and maybe you've already spoken to someone like yourself and put something in place. But that's a good start, it sounds like to at least have been thinking about that at some point.

But you still need to check it for Maryland specifically, is that correct?

Stephenie Yeung: Absolutely because Maryland does have a few issues that you need to pay attention to, particularly a collection of sensitive data. Any of our clients who are collecting [00:06:00] consumer health data. And this is not like HIPAA regulated data necessarily, consumer health data. It's supplements, disclosures any sort of health devices that you might be wearing, including, apple watches, kinds of devices. If you collect any consumer health data, which is data that the business can use to determine your physical or mental health status. That's considered special or sensitive personal data under the Maryland law, and there are restrictions on it.

And to this point, I should point out since I'm on OK at Work that employers who are collecting that data have to make sure that they have a confidentiality agreement with their employees and contractors before they give access to them of the consumer health data. That is a requirement of the Maryland law.

Russell Berger: Well, Sarah, I don't know about you. It feels like a lot. So Stephenie, if you could [00:07:00] just leave us with people have listened to this now and I do think it's a lot and it's a lot of, it's changed, it's evolution. Obviously it's necessary as we move more and more into a digital world, what's the one thing, the top line takeaway that business owners should have as a result of this change in the law or new law?

Stephenie Yeung: They should absolutely be aware of what data they have. How they're collecting it, how they're using it and how they're sharing it.

And make sure that their internal policies and also their agreements with third parties, their vendors, their service providers have the appropriate requirements and disclosures in place.

Sarah Sawyer: Stephenie, I know I learned a lot. And I'm excited to learn more as this law takes effect and rolls out.

I'm sure there'll be a lot of our clients and some I don't think this will be the last we'll be hearing of it, Russell and I, with our clients and look forward to, making use of your background on this. Because it sounds like there's gonna be a lot of people impacted by this. And it's a really great starting point.

[00:08:00] We really appreciate you coming on to give us the high level and thanks for coming on again.

Stephenie Yeung: Always happy to talk about it.

Russell Berger: Thanks, Stephenie. Really appreciate it.

Stephenie Yeung: Thank you.