



## Ohio's New Data Protection Act Creates Safe Harbor for Data Breaches

Effective November 2, 2018, the Data Protection Act (the "Act") is the first legislation enacted as a result of the Ohio Attorney General's CyberOhio Initiative. The Ohio Attorney General describes the Act as a "measure [that] encourages businesses to voluntarily adopt strong cybersecurity controls to protect consumer data."

Under the Act, if a business takes reasonable cybersecurity precautions conforming to "industry recognized framework," the Act provides a safe harbor or an affirmative defense to tort claims alleging that failure to implement reasonable cybersecurity measures resulted in a data breach of personal or restricted information (which could include information about employees).

In order to qualify for the safe harbor, the cybersecurity program must be designed to:

1. protect the security and confidentiality of the information;
2. protect against any anticipated threats or hazards to the security or integrity of the information; and
3. protect against unauthorized access to, and acquisition of, information that is likely to result in a material risk of identity theft or other fraud to the individual to whom the information relates. R.C. 1354.02(B)(1)-(3).

The reasonableness of the cybersecurity program is based upon the:

1. size and complexity of the business;
2. nature and scope of the activities of the business;
3. sensitivity of the information to be protected;
4. cost and availability of tools to improve information security and reduce vulnerabilities; and
5. resources available to the business. R.C. 1354.02(C)(1)-(5).



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For more information on the Ohio Data Protection Act, please contact a member of our firm's Business and Labor & Employment Groups.

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