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Data Breaches: Readiness and Response

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Agenda

- Data Breach Readiness
  - Laws Protect “Personal Information”
  - Knowing the Applicable Laws and Standards
  - Understanding the Threats
  - Security Best Practices and Fundamentals
- Data Breach Response
  - Verification
  - Containment and Mitigation
  - Investigation and Analysis
  - Notification
  - Post-incident Review

Data Breach Readiness

Laws Protect "Personal Information"

What is Personal Information? Individual first name or initial + last name, plus the following

- User IDs, passwords, mother's maiden name, answers to security questions
- Government identification numbers (driver's license, SSN, passport)
- Financial account numbers (usually in combination with security codes)
- Employee identification number (not common)
- Biometric data
- Medical and/or health insurance information
- *Increasing trend to not require name under certain circumstances*

Knowing the Applicable Laws and Standards

- State Law
  - General or State Agency Data Breach Statute(s)
  - Medical Privacy (or other information-specific) Laws
- Federal Law
  - HIPAA/HITECH
- Contracts/Industry Standards
  - PCI DSS

Understand the Threats

- Inside Threats
  - Employee negligence
    - Security failures
    - Lost mobile devices
  - Employee ignorance
    - Improper storage and disposal of personal information
    - Lack of education and awareness
  - Malicious employees
- Outside Threats
  - Hackers
  - Malware
  - Phishing
  - Thieves
  - Vendors

Security Best Practices

Employ Technical, Administrative and Physical Safeguards

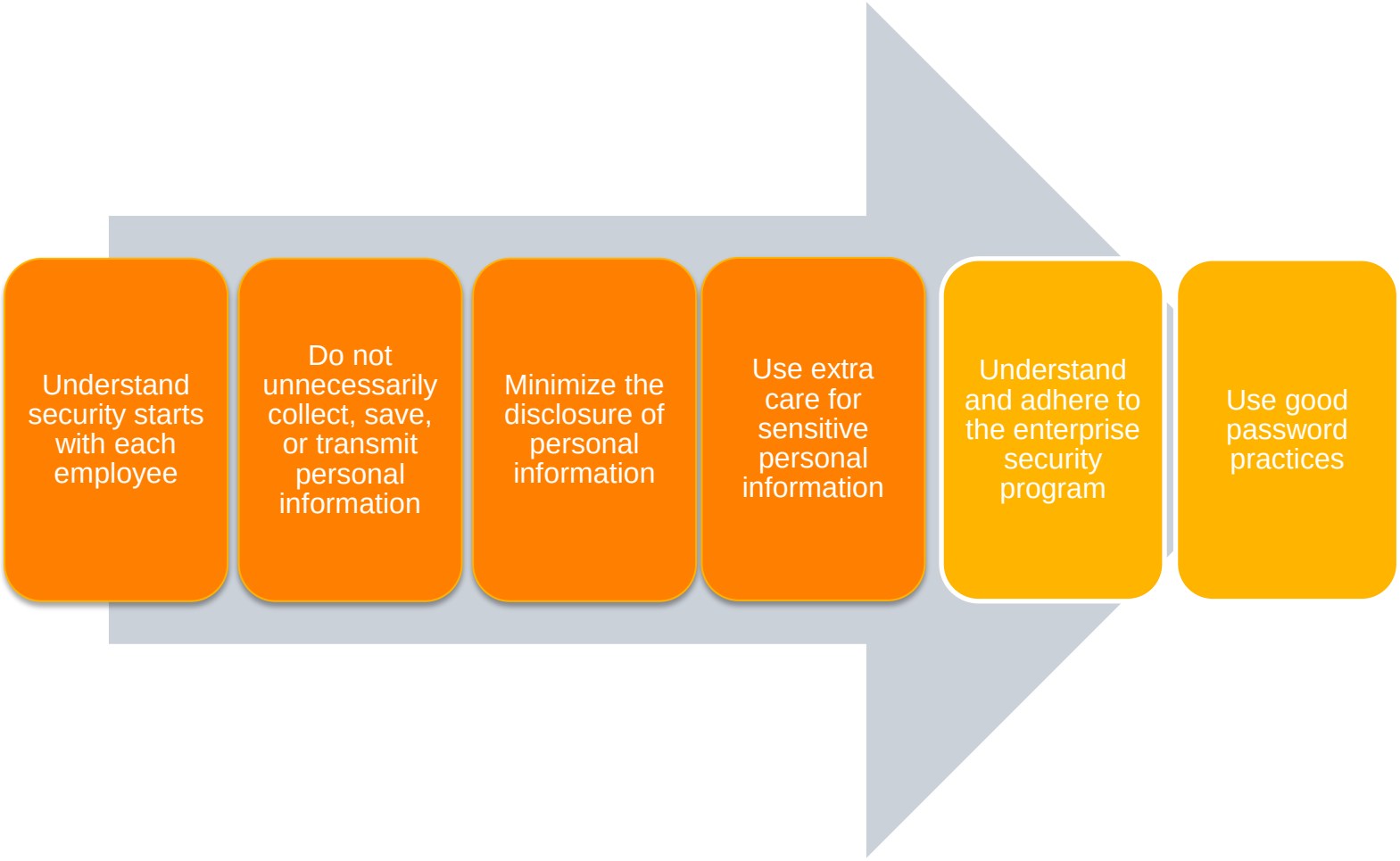
- Key **administrative safeguards** include:
  - Written policies and procedures
    - Privacy policies
    - Information security policies
    - Use policies, such as BYOD, etc.
  - Employee training and awareness
  - Personal information inventories
  - Vendor oversight programs
- Key **physical safeguards** may include:
  - Device and media controls
  - Locking file cabinets
  - Securing hardware with locks
- Key **technical safeguards** may include:
  - Encryption
  - Anti-virus programs
  - Access controls
  - Firewalls

Security Fundamentals*

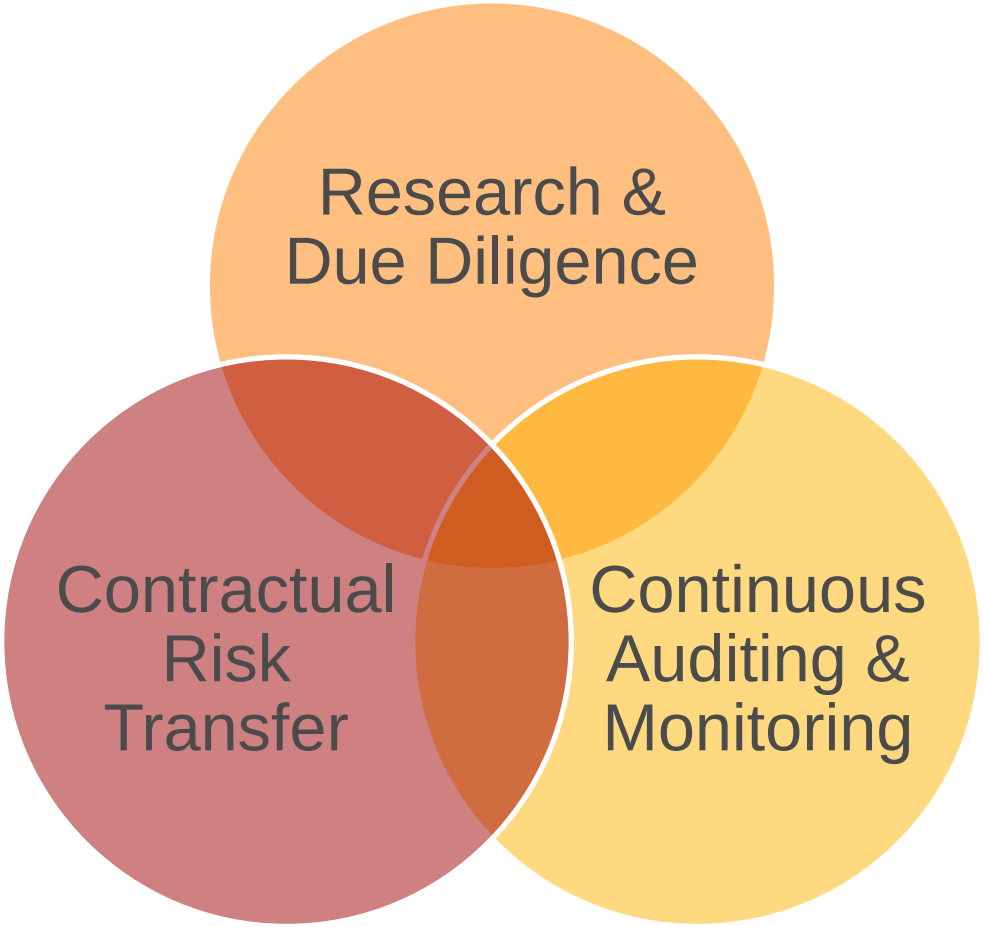
- Do not collect, keep, or use personal information unnecessarily
- Restrict access to sensitive data
- Require secure passwords and authentication
- Store sensitive personal information securely and protect it during transmission:
- Ensure proper configuration by segmenting the network and monitoring who is trying to get in and out
- Secure remote access to the network
- Apply sound security practices when developing new applications
- Make sure service providers implement reasonable security measures – put them in writing and verify compliance
- Put procedures in place to keep security current and address vulnerabilities
- Secure paper, physical media and devices.

** See the FTC's Start with Security: A Guide for Business*

Security Fundamentals / Personal Use Security



Security Fundamentals / Vendor Management



Data Breach Response

Verify that a Breach has Occurred

- Identify the affected system(s) or hardware
  - Lost laptop v. the Network
- Identify the nature of the data affected
  - PII? Encrypted?
- Understand the incident type
  - Malicious v. accidental; internal actor(s) v. external actor(s)
- Determine whether data was exposed
  - Actual exposure v. reasonable likelihood of exposure

Contain and Mitigate the Damage

- Identify systems and information that were compromised
- Take immediate steps to stop the source/responsible entity
  - E.g., Take machines offline, find and remove malware
- Determine whether other systems are threatened
- Implement additional technical measures as needed
  - E.g., Changing locks, passwords, admin rights

Investigate and Analyze the Incident

- Collect and preserve information and evidence
  - Document the who, what, why and when
- Consider attorney-client privilege and Sunshine Laws
  - Analysis of your analysis
- Determine whether outside help is needed
  - Third-party consultants/forensic experts
  - Outside counsel
- Analyze the legal implications
  - Risk of harm to affected persons
  - Encryption (or other readability) safe harbors

Make Necessary Notifications (if any)

- Determine Who
  - Affected individuals
  - Regulatory/law enforcement authorities
  - Third-party vendors/insurance carriers
- Determine How
  - Medium: mail? email? phone?
  - Use a vendor or handle in-house?
- Determine What
  - Look to the relevant laws
- Determine When
  - Statute-specific, but generally 30-45 days (or as soon as practicable)

Conduct a Post-Incident Review

- Review existing security policies and procedures
  - What worked, what did not
  - What could have helped or prevented the incident
- Improve incident response plan
  - Incorporate lessons learned

Relevant Practical Law Resources

- Data Breach Response Checklist (included in CLE materials)
- Practice Note, The NIST Cybersecurity Framework
- Practice Note, Breach Notification
- Data Breach Notification Laws: State Q&A Tool
- Cyber Insurance: Insuring for Data Breach Risk

These resources are available with the free, no-obligation trial password to Practical Law you receive by attending this session.

Practical Law:

What Are You Working On?

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Questions

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