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New Law on Information Protection in Massachusetts

By Joseph W. Worthen, II, partner at Rudolph Friedmann LLP



Jay Worthen

Be careful what you wish for. Most people would say that protection against the misuse or improper dissemination of personal information (social security, credit card or bank account numbers, for example), is a good thing. If you feel that way, (and who does not?), then you would think that Massachusetts' relatively new legislation designed to do just that

would be a welcome addition to the panoply of legislative protections. Read on - you may change your mind.

Massachusetts has passed two pieces of legislation that attempt to address, and protect, the security of personal information, but the cost of compliance, and the penalties for failure to comply with the statute, will prove to be an unwelcome burden to most businesses. These two seemingly simple acts are: M.G.L. ch. 93 H enti-

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E-Mails Can Modify Contracts

We send e-mails so casually and with such informality, even in the business environment, that it is easy to forget that they may carry significant legal consequences. It is only prudent to bear in mind that even e-mails written in the most conversational style may create legal obligations no less binding than a more conventional written agreement laden with legalese and signed with all formalities.

If a business wants to entirely avoid the possibility of having e-mails treated as binding amendments to existing contracts, the best approach is to be as clear and direct as possible on the sub-

ject by including language in contracts to the effect that e-mails do not count as signed writings for purposes of any contract amendments.

Cautionary Case

A recent cautionary case on point involved an individual who sold his public relations firm to a global communications company. The deal included an employment contract under which the seller was to continue as chairman and CEO of the new company for three years. Soon, the new company was losing money and the seller was

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E-Mails

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presented with the option of either leaving or taking on new responsibilities.

E-mail then entered the picture when an employee of the communications company sent yet another option to the seller in an e-mail that spelled out how the seller would allocate his time. The seller replied by e-mail that he enthusiastically accepted that proposal. For his part, the representative of the communications company replied by e-mail that he was thrilled with the seller's decision to accept the new offer. In both e-mails the sender had typed his name after the message.

The seller later had a change of heart and sued to enforce the terms of the original employment agreement. An appellate court ruled against

him on the ground that the exchange of e-mails on the new employment proposal constituted a binding amendment to the employment agreement. This was so even though the original agreement required that any changes had to be in the form of signed writings.

The court reasoned that the e-mails effectively were signed writings because the parties' names appeared at the end of the e-mails, signifying an intent to authenticate the preceding contents of the messages. Likewise, the e-mails also were signed writings for purposes of the Statute of Frauds, which requires certain contracts to be in writing in order to be enforceable. In short, when the seller and his e-mail correspondent clicked "send" and "reply," they were sealing a new deal that the seller could not avoid even though it was in an electronic form.

Firm News



John and Kate

John Moorman and his fiancée, Kathleen Barrett, recently married at the all inclusive Beaches resort on Turks and Caicos Island in April. John's three children,

Alexis (16), Jake (14) and Krista (13) and Kathleen's two children, Jennie (20) and Cameron (16) also traveled with them for vacation and to attend the wedding. Kathleen works as a Certification Coordinator for TUV SUD American, Inc. in Peabody. John and Kate will continue to reside in Danvers.

John A. Murphy recently became engaged to his longtime



John Murphy

girlfriend, Ruth Mendonca. Ruth is a United States Postal Inspector. John and Ruth plan to get married in June, 2010.

Our new runner, Hunter Hrab, recently graduated from State University of New York (SUNY) at Plattsburgh with a degree in business and a minor in finance. He eventually wants to get a Masters in Public Policy. Hunter is originally from Long Island but now calls Boston his home. He is an avid skier.

Kaitlyn Brennan recently joined the firm as Jon Friedmann's legal assistant. Kaitlyn has a degree in Criminal Justice from Northeastern University and has worked as a legal litigation assistant in Boston for five years prior to joining Rudolph Friedmann LLP.



Hunter Hrab



Kaitlyn Brennan