

# General Data Privacy Regulation

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German American Chamber of Commerce

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# Topics

- What is the GDPR?
- What does it cover?
- What should I be doing?



# What is the GDPR?

4.5.2016

EN

Official Journal of the European Union



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*(Legislative acts)*

## REGULATIONS

REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
of 27 April 2016

on the protection of natural persons with regard to the processing of personal data and on the free  
movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

*(Text with EEA relevance)*

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AL%3A2016%3A119%3ATOC>

*Quarles & Brady LLP*

# Some New Aspects

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- **Broader scope**: applies not only to businesses established in the EU, but also US businesses selling into the EU or collecting data from the EU (for example placing cookies on a EU person's computer)
- **Stricter rules on consent**: Securing the requisite consent from the data subject much more difficult
- **More rights for data subjects**: access, rectification, erasure, right to be forgotten, portability)
- **Fines**: substantial increase

# What does the GDPR cover?

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- Collection and processing of **personal data**
- What is "personal data"?

"Any information relating to an identified or identifiable natural person."

# What does the GDPR cover?

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- Examples of **personal data** :
  - The information submitted by a job applicant
  - A person orders products to be sent to her home address
  - Company tracks visitors to its website
- Not just confidential or private information

# What does the GDPR cover?

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- What is "processing"?  
"any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means"
- Not just electronic

# What does the GDPR cover?

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## Distinction:

- Collection or processing in the EU
  - Example: ABC GmbH in Frankfurt collects data on its German employees
    - This is a German data privacy issue (based on the GDPR)
- Transfer of personal data to the US
  - Example: The German affiliate of XYZ Inc. in Chicago sends personal data from Germany to the US

# Can my company transfer data from the EU to the US?

- **Prohibited** unless adequate safeguards in place in the US
- Options to fulfill the adequate safeguards requirement
  - ✓ Consent (not really)
  - ✓ Privacy Shield
  - ✓ Model contract terms
  - ✓ Binding corporate rules (approved by a DPA)



# How does my company comply with the GDPR?

- Start with an internal audit to determine ...
  - ▶ what data your company collects
  - ▶ what your company does with the data
  - ▶ what measures your company already takes to protect personal data



# Some immediate easy steps

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- ⇒ Add **standard data protection language** to your contracts and standard terms (i.e., your business partners agree to protect the data)
- ⇒ Update your **existing privacy notices**
- ⇒ Update your **internal privacy policies** and procedures
- ⇒ Revisit your **consent** procedures
- ⇒ Make sure your **data security system** is state of the art
- ⇒ Review your agreements with **third parties**
- ⇒ Ask whether your company even **needs to collect** the personal data
- ⇒ Ask whether it is feasible to **anonymize the data** (so that the GDPR does not apply)



# Data protection

Rules for the protection of personal data inside and outside the EU.

## Data protection in the EU

The General Data Protection Regulation (GDPR), the Data Protection Law Enforcement Directive and other rules concerning the protection of personal data, as well as authorities tasked with enforcement.

## Data transfers outside the EU

Rules on international transfers of personal data  
EU-US Privacy Shield  
Adequacy of the protection of personal data in non-EU countries  
Binding corporate rules  
Model contracts for the transfer of personal data to third countries  
Transfer of air passenger name record data and terrorist finance tracking programme

## Reform of EU data protection rules

Rights for citizens  
Rules for business and organisations  
What is personal data?  
What does the General Data Protection Regulation (GDPR) govern?  
What constitutes data processing?  
What are Data Protection Authorities (DPAs)?

[https://ec.europa.eu/info/law/law-topic/data-protection\\_en](https://ec.europa.eu/info/law/law-topic/data-protection_en)



[Self-Certify](#) [Privacy Shield List](#) [Audiences](#) [About](#)

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## WELCOME TO THE PRIVACY SHIELD

The EU-U.S. and Swiss-U.S. Privacy Shield Frameworks were designed by the U.S. Department of Commerce and the European Commission and Swiss Administration to provide companies on both sides of the Atlantic with a mechanism to comply with data protection requirements when transferring personal data from the European Union and Switzerland to the United States in support of transatlantic commerce.

[LEARN MORE](#)



U.S. Businesses



European Businesses

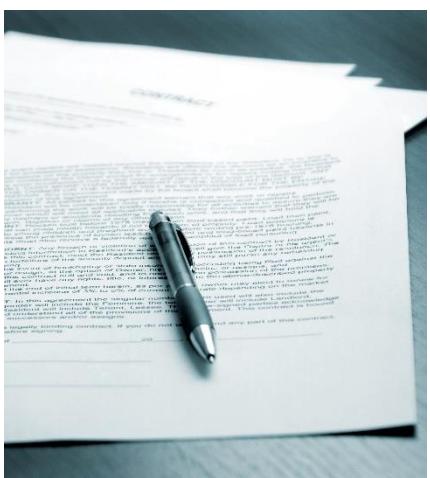
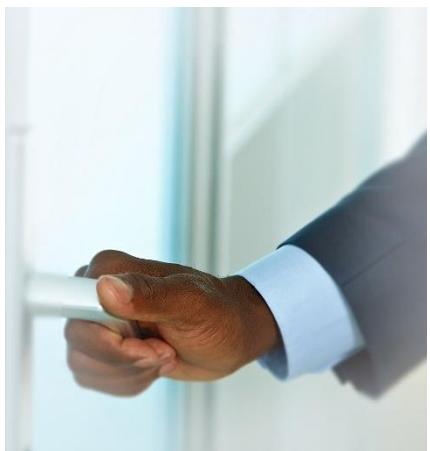


EU and Swiss Individuals



Data Protection Authorities

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# Newest Developments in Immigration Matters -Sarah Ames

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# Overview of Major Developments in Immigration

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- Significantly longer processing times
  - Consulates (from 2-3 weeks to 3-4 months in some cases)
  - USCIS (3 months to 5-6 months in some cases)
- De Novo reviews of extension applications – no deference to previous adjudications
- Increase in Requests for Evidence (RFEs)
- Increase in denials

# Overview of Major Developments in Immigration (cont.)

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- Higher scrutiny and changed interpretations of eligibility criteria
  - Third party placements (H-1Bs)
  - "Specialized knowledge"
- Restrictions of TN Economists (NAFTA visa)
  - Can effect professions related to economics such as market research, marketing specialists and financial analyst positions
- The next tweet.

# What Employers Should Do to Prepare

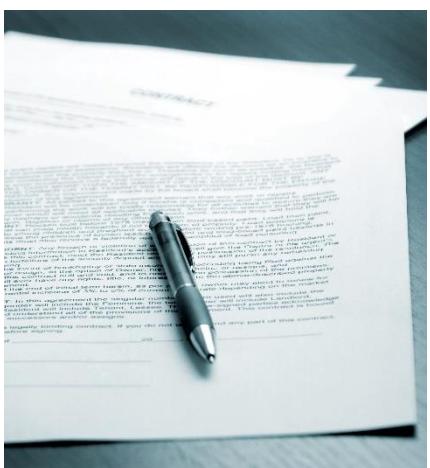
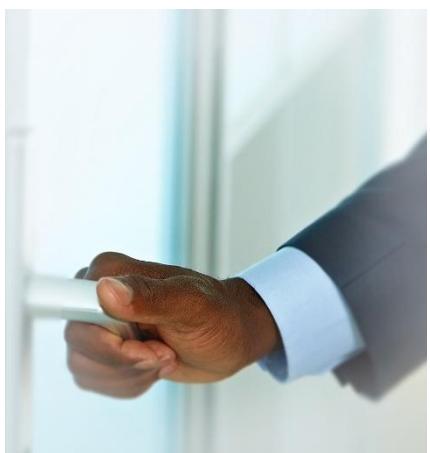
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- Take stock of company's current immigration practices:
  - Visas for officers (in particular President and Vice Presidents) that don't reside in the U.S.
  - If company has H-1B or E-3 employees, self-audit DOL Public Access Files
  - Have employees check all I-94 cards online after each entry (<https://i94.cbp.dhs.gov> )
  - Plan much further in advance and consider denials a real possibility
  - Identify when was the last I-9 self-audit performed, is E Verify an option
  - Prepare HR, business managers, receptionists for unannounced "site visits" by government agencies
  - Develop consistent message for foreign national employees (including DACA)

# What Employers Should Do to Prepare (cont.)

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- Consider implementing travel plan/system to ensure employees from designated countries are not stranded on business trips
- Consider advising employees regarding rights/responsibilities during reentry into the U.S.
  - Can employees share sensitive company information on their phone, laptop or workbag with CBP officers? Is a warrant ever needed?
- Have an emergency plan if immigration raid occurs
  - Who to notify?
  - Media relations?
  - Employee messaging?



# Sales Agents & Distributors

## -W. David Braun

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# Sales Representative Protection Statutes

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- Illinois Sales Representative Act
  - §2 – All commissions due at the time of termination of a contract between a sales representative and principal shall be paid within 13 days of termination, and commissions that become due after termination shall be paid within 13 days of the date on which such commissions become due. Any provision in any contract between a sales representative and principal purporting to waive any of the provisions of this Act shall be void.

# Sales Representative Protection Statutes

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- Illinois (cont.)
  - §3 – A principal who fails to comply with the provisions of Section 2 concerning timely payment or with any contractual provision concerning timely payment of commissions due upon the termination of the contract with the sales representative, shall be liable in a civil action for exemplary damages in an amount which does not exceed 3 times the amount of the commissions owed to the sales representative. Additionally, such principal shall pay the sales representative's reasonable attorney's fees and court costs.
  - *NOTE: Written contract or, if no written contract, past practice controls; no waiver of this law.*

# Sales Representative Protection Statutes

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- California Independent Wholesale Sales Representatives Contractual Relations Act of 1990
  - §1738.15 Willful failure to enter contract or pay commissions; treble damages to sales representative. A manufacturer, jobber, or distributor who willfully fails to enter into a written contract as required by this chapter or willfully fails to pay commissions as provided in the written contract shall be liable to the sales representative in a civil action for treble the damages proved at trial.
  - §1738.16 Attorney's fees and costs. In a civil action brought by the sales representative pursuant to this chapter, the prevailing party shall be entitled to reasonable attorney's fees and costs in addition to any other recovery.
  - *NOTE: Contract must be in writing.*

# Sales Representative Protection Statutes

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- Texas Business & Commerce Code
  - §54.003 – Payment on Termination of Certain Compensation Agreements. If a compensation agreement between a sales representative and a principal that does not comply with Section 54.002 is terminated, the principal shall pay all commissions due the sales representative not later than the 30<sup>th</sup> working day after the date of termination.
  - §54.004 – Damages. A principal who fails to comply with a provision of a contract under Section 54.002 relating to payment of a commission or who fails to pay a commission as required by Section 54.003 is liable to the sales representative in a civil action for: (1) three times the unpaid commission due the sales representative; and (2) reasonable attorney's fees and costs.
  - *NOTE: Contract must be in writing; no waiver of this law.*

# Dealers/Distributors

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- Wisconsin Fair Dealership Law
  - §135.03 – Cancellation and alteration of dealerships. No grantor, directly or through any officer, agent or employee, may terminate, cancel, fail to renew or substantially change the competitive circumstances of a dealership agreement without good cause. The burden of proving good cause is on the grantor.
  - §135.02(4) – "Good cause" means: (a) failure by a dealer to comply substantially with essential and reasonable requirements imposed upon the dealer by the grantor, or sought to be imposed by the grantor, which requirements are not discriminatory as compared with requirements imposed on other similarly situated dealers either by their terms or in the manner of their enforcement; or (b) bad faith by the dealer in carrying out the terms of the dealership.

# Dealers/Distributors

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- Wisconsin (cont.)
  - §135.04 – Notice of termination or change in dealership. Except as provided in this section, a grantor shall provide a dealer at least 90 days' prior written notice of termination, cancellation, nonrenewal or substantial change in competitive circumstances. The notice shall state all reasons for termination, cancellation, nonrenewal or substantial change in competitive circumstances and shall provide that the dealer has 60 days in which to rectify any claimed deficiency. If the deficiency is rectified within 60 days the notice shall be void. The notice provisions of this section shall not apply if the reason for termination, cancellation or nonrenewal is insolvency, the occurrence of an assignment for the benefit of creditors or bankruptcy. If the reason for termination, cancellation, nonrenewal or substantial change in competitive circumstances is nonpayment of sums due under the dealership, the dealer shall be entitled to written notice of such default, and shall have 10 days in which to remedy such default from the date of delivery or posting of such notice.

# Dealers/Distributors

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- Wisconsin (cont.)
  - §135.044 – Repurchase of inventories. If a dealership is terminated by the grantor, the grantor, at the option of the dealer, shall repurchase all inventories sold by the grantor to the dealer for resale under the dealership agreement at the fair wholesale market value. This section applies only to merchandise with a name, trademark, label or other mark on it which identifies the grantor.
  - *NOTE: No arbitration permitted unless "good cause" criteria apply as set forth in the Act; dealer may seek right to damages, costs and attorneys' fees.*

# Dealers/Distributors

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- California Fair Dealership Law
  - §83. Refusal to grant dealership; prohibited grounds. On or after January 1, 1981, no grantor, directly or indirectly, shall refuse to grant a dealership to any person because of any characteristic listed or defined in subdivision (b) or (e) of Section 51.
  - §84. Termination, cancellation or refusal to renew dealership agreement; prohibited grounds. On or after January 1, 1981, no grantor, directly or indirectly, may terminate, cancel, or refuse to renew a dealership agreement with a dealer because of any characteristic listed or defined in subdivision (b) or (e) of Section 51.

# Dealers/Distributors

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- California (cont.)
  - §51 (b) All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

# Dealers/Distributors

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- California (cont.)
- §51 (e) For purposes of this section:
  - (1) “Disability” means any mental or physical disability as defined in Sections 12926 and 12926.1 of the Government Code.
  - (2) (A) “Genetic information” means, with respect to any individual, information about any of the following: (i) The individual’s genetic tests. (ii) The genetic tests of family members of the individual. (iii) The manifestation of a disease or disorder in family members of the individual. (B) “Genetic information” includes any request for, or receipt of, genetic services, or participation in clinical research that includes genetic services, by an individual or any family member of the individual. (C) “Genetic information” does not include information about the sex or age of any individual.
  - (3) “Medical condition” has the same meaning as defined in subdivision (i) of Section 12926 of the Government Code.
  - (4) “Religion” includes all aspects of religious belief, observance, and practice.

# Dealers/Distributors

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- California (cont.)
- §51 (e) (cont.)
  - (5) “Sex” includes, but is not limited to, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth. “Sex” also includes, but is not limited to, a person’s gender. “Gender” means sex, and includes a person’s gender identity and gender expression. “Gender expression” means a person’s gender-related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth.
  - (6) “Sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status” includes a perception that the person has any particular characteristic or characteristics within the listed categories or that the person is associated with a person who has, or is perceived to have, any particular characteristic or characteristics within the listed categories.
  - (7) “Sexual orientation” has the same meaning as defined in subdivision (s) of Section 12926 of the Government Code.
    - *NOTE: Prevailing party is entitled to reasonable attorneys' fees and court costs.*

# Dealers/Distributors

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- Maryland Fair Distributorship Act
- Puerto Rico Fair Distributorship Act

# Industry-Specific Laws

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- Auto dealers
- Beer, wine, spirits
- Agricultural machinery
- Fuel stations
- Heavy equipment



# THANK YOU