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As a fellow Primerus firm, we wanted to make you aware that the General Data Protection Regulation (GDPR) will replace the current Data Protection Directive 95/46/ec in May 2018 as the primary law regulating how companies protect European Union (EU) citizens' personal data (data that can be traced to an identifiable individual). It will also create a fundamental change in the ways in which US organizations collect, share and manage data. Microsoft has called GDPR one of the Top Ten Technology Issues of 2018, and Bloomberg News has characterized the regulation as a "seismic change" for technology companies. In 2018, any company with a website or a mobile app is a "technology company" and most will be subject to some GDPR requirements, if not all. Penalties for violation can reach 4% of annual gross revenue, or €20 million, whichever is *greater*.

The GDPR can apply to companies outside the E.U., including those based in the U.S. To determine whether it applies to your client's company, consider the following four questions:

1. Does the organization have a website or mobile app and offer goods or services to individuals within the European Union?
2. Does the company receive, store or in any way use data about or from European Union residents?
3. Do any of its employees reside within the European Union?
4. Does the company monitor or track online behavior of residents of the European Union, such as through the use of website cookies, Google Analytics or other tracking or monitoring platforms or applications?

If you have answered "yes" to any of the above questions, the GDPR applies to your client's company and the organization will, as of May 25, 2018, be responsible for full compliance and will also be subject to penalties for noncompliance.

The GDPR asks a lot of these companies, in the interests of transparency as to how they will use, store and disclose data they obtain about customer and employees. Obligations, which must be documented, comprise a data privacy impact assessment; preparation of policies and procedures prepared with privacy by design (technology to assist compliance); protocols for cybersecurity; processes for obtaining consent for data uses and withdrawal of consent; revision of vendor agreements with clauses required by GDPR; processes to obtain consent for certain uses of analytics in which the consent explains the purpose of the automated decision-making; and security incident response with breach notification protocols for notification within 72hours of discovery of the breach.

Meeting these requirements by the May deadline can be time consuming and labor intensive, but time and cost can be controlled through guidance from counsel experienced in European privacy and security laws and how compliance with privacy and cybersecurity regulations in states such as California, Colorado, Connecticut, Massachusetts, New York and Vermont can be leveraged to meet GDPR requirements at a considerable cost savings over parallel compliance initiatives.

If your firm or your clients are covered by the GDPR and require assistance in meeting its requirements, please contact Kenneth N. Rashbaum or Jason A. Cohen of the Barton LLP GDPR Compliance Group.

Kenneth N. Rashbaum heads Barton LLP's Privacy and Cybersecurity Practice. His team provides counsel on privacy and cybersecurity assessments and cyber risk insurance coverage; reviews, drafts and negotiates vendor agreements and license agreements; prepares policies and procedures necessary for international e-commerce; and prepares and delivers workforce training on confidentiality, cybersecurity and privacy. The firm also provides breach response counsel and represents organizations subject to investigations, audits and litigation arising from data breaches.

Jason A. Cohen is a commercial litigator and is a part of Barton LLP's Privacy and Cybersecurity Practice. As a part of this practice Jason provides counsel on privacy and cybersecurity assessments and cyber risk insurance coverage; reviews, drafts and negotiates vendor agreements and license agreements; prepares policies and procedures necessary for international e-commerce; and prepares and delivers workforce training on confidentiality, cybersecurity and privacy. Jason and his colleagues also provide breach response counsel and represents organizations subject to investigations, audits and litigation arising from data breaches.

If your firm or your clients are covered by the GDPR and require assistance in meeting its requirements, please contact the Barton LLP GDPR Compliance Group at:

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Barton LLP is a full service law firm that provides our business and personal clients with the highest level of representation over a broad range of matters. Our mission is to provide the effective and efficient delivery of high quality legal services by partnering with our clients to understand their goals and meet their objectives.