

February 3, 2015

Retail Update

Most retailers have loyalty programs and in developing such, a significant amount of information is gathered, some of it personal, that is normally electronically stored but sometimes manually. The Legislature of Puerto Rico went much further than what is provided by Law No. 111 – 2005 which purports to provide information to the citizens about the security of the information provided to banks, as well as Article 209 of our Penal Code which provides legal sanctions against the divulging of personal information in certain cases. The Regulation Against Deceptive Practices and False Advertising of the Department of Consumer Affairs (DACO) also provides guarantees as to how businesses are to use information gathered about customers usually at points of sale (POS).

Law No. 234 of December 19, 2014 (the “Law”), seeks to further protect personal information of consumers in this Commonwealth (the “Information”) by requiring the commercial entity (the “Entity”) that receives, files, becomes a custodian or controls the files which contain Information and they wish to discard same so that said process is carried out without undermining the privacy of consumers. The Law is in full force and effect and details what is to be considered personal information and mandates that whenever the Information is to be discarded it is to be shredded or modified in such a way that the Information cannot be read or deciphered by any method. If the information is contained in digital format, its disposition must meet all legal standards that be applicable. The same applies to whenever the commercial entity that possesses the information ceases operations or is merged with another entity, in which case the surviving entity must also comply with what is required by this Law.

Whatever process or procedure is selected by the company that wishes to destroy Information, it must be performed before a Notary Public who in Puerto Rico must also be an attorney. The Notary will prepare an Act (a Public Deed) in which he/she will describe what the Entity has done to destroy the Information and how such complies with the statute. Notwithstanding the above, companies having 25 employees or less and a gross income of less than \$3M, are not covered by Law No. 234.

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