

Verifile International Newsletter

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Welcome to our May 2019 edition of our newsletter which contains important news and updates from us.



Verifile Named In Her Majesty the Queen's Birthday Honours List

We are absolutely delighted to announce that Verifile has been awarded the Queen's Award for Enterprise in the category of International Trade. This award is in recognition of having demonstrated outstanding growth in overseas sales over the past six years.

The Queen's Awards for Enterprise are the UK's most prestigious business awards, recognising and celebrating business excellence across the UK. The award highlights the growing demand worldwide for pre- and post-employment screening, as organisations look to mitigate their recruitment risks and insider threats.



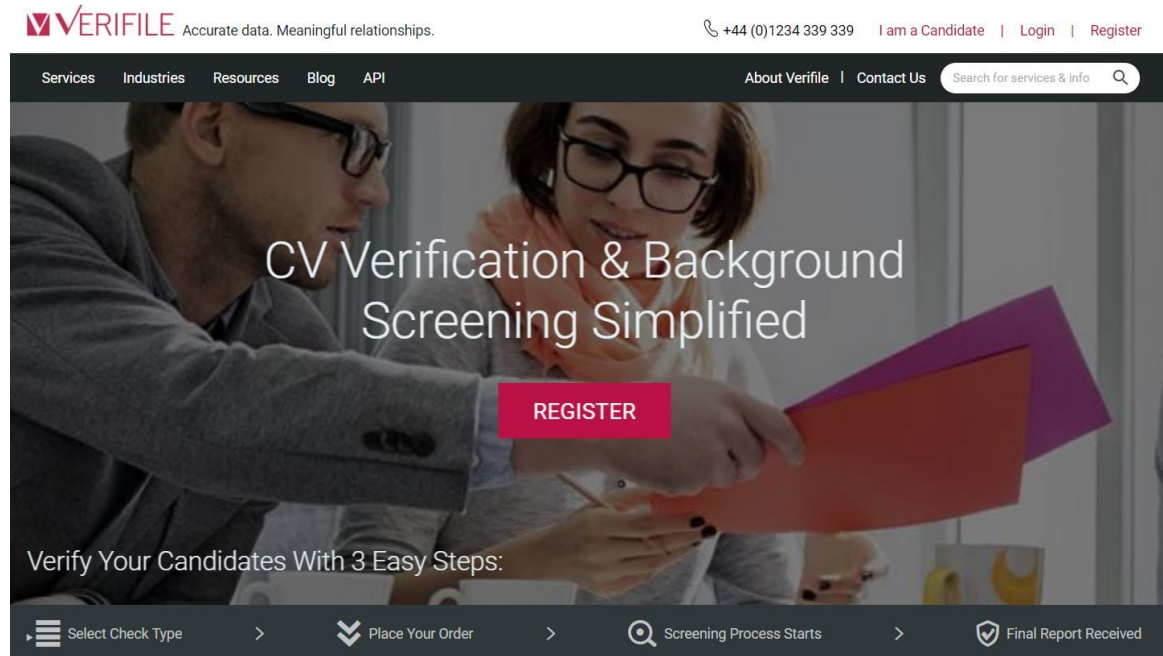
**THE QUEEN'S AWARDS
FOR ENTERPRISE:
INTERNATIONAL TRADE
2019**

Our business is all about helping employers to mitigate their recruitment risks. Increasingly, this is now a global undertaking, helping businesses from around the world to expand their workforces.

Established in 1965, the Queen's Awards for Enterprise are designed to recognise the achievements of British businesses. Verifile now joins over 4,500 other businesses recognised for their export achievements in the programme's 50-year history.

We are thrilled to become the first screening company to receive this much-coveted honour, highlighting our status as a premium provider of global background screening services.

Our new website and branding has launched



We are delighted to announce that our new-look website has gone live today; the result of 12 months of hard work to overhaul not just the Verifile website but also our entire brand identity.

The site features all the information our clients have told us they want and need about the Verifile offer - the services we provide; the industries and countries we're active in; the expected turnaround times.

There's a new candidate page, with all the information candidates need to know about the screening process, complete with supporting videos. There's a new and improved blog, more info about us as a company, insights into why and how we do what we do – and much more besides. And all of this is wrapped up within a sharp, contemporary design that better reflects the modern, fit-for-purpose Verifile.

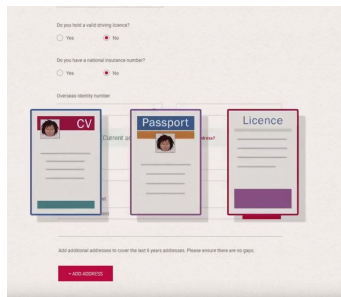
Everything you see on our website is there for a reason. It's there to demonstrate how we go beyond verification. It's there to show how we set the benchmark for accurate data, technological advances, tailored solutions and a highly personalised, consultative approach. It's there to prove that we're a premium provider of background screening services.

I hope you like what you see – and we'd love to hear your feedback. www.verifile.co.uk

New candidate portal help guide videos

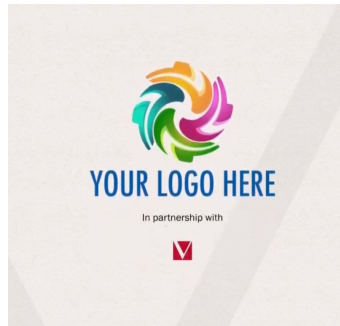
We have recently launched a new video to help guide candidates in filling in our online portal:

<https://www.youtube.com/watch?v=1YBTwH7y-ic&t=49s>



We are also delighted to offer this video with your own branding-POA:

<https://www.youtube.com/watch?v=tZJQjAMdSaw>



Please contact marketing@verifile.co.uk for more details



UK Criminal Record Checks

Many of our clients are supporting the NHS with a variety of ways, and the question keeps popping up whether or not they should be getting their staff checked for **standard** or **enhanced** DBS checks. We have recently received several enquiries regarding the level of check that is appropriate for contractors visiting NHS Trust sites, including Medical Sales Representatives and Service Engineers.

Eligibility with regard to roles held by contractors visiting NHS Trust sites, including Medical Sales Representatives and Service Engineers, has not changed, and the guidance provided by both **NHS Employers** and DBS advises that in the majority of cases, basic level checks are appropriate. However, standard level checks may be requested where the contractor is providing a health service and has access to patients while carrying out their role.

Verifile pays particularly close attention to applications for such roles to ensure that checks are not submitted at a level that is above and beyond eligibility laid out in legislation.

We would also take this opportunity to remind our clients that any contractual statement they may have with their NHS client regarding the level of check required for contractors as part of any broader accreditation arrangements does not override eligibility as laid out in legislation. In such a scenario it is important that clients challenge requests made by NHS Trusts for levels which seem unjustified.

Our industry page for the **Health and Social Care** industry covers additional guidance.

Important update from DBS - Undisclosed addresses for enhanced level checks

The Disclosure and Barring Service (DBS) are changing their process for handling undisclosed addresses identified during enhanced level checks. Undisclosed addresses are those that the candidate did not declare in their application, and the DBS or a local police force have reason to believe that they did reside there during the last 5 years. Previously, DBS updated the address history and proceeded with the check. Going forward, DBS will instead cancel the check and so a new order would need to be placed that includes the undisclosed address. We understand that DBS will tell us the undisclosed address and we share that address with you.

Checks on joining a profession

Having recently reviewed eligibility guidance issued by the DBS, we are updating our own guidance on criminal checks for individuals entering certain professions, and individuals changing employer or role in those professions.

The professions are:

- Master locksmiths
- Barristers
- Chartered and certified accountants
- Veterinary surgeons
- Actuaries
- Registered foreign lawyers
- Chartered Institute of Legal Executives – legal executive and other authorised person

DBS guidance states that individuals are eligible for a standard level check upon entry into these professions. Subsequent checks undertaken when changing employer or role are eligible for a basic level check.

If you need to update your DBS job roles or packages to reflect these changes, please let us know.

Checks in Northern Ireland

AccessNI has added an Irish marriage certificate to its list of acceptable documents. AccessNI now asks that their new form is used during the ID checking process for each application. You can find the form [here](#).

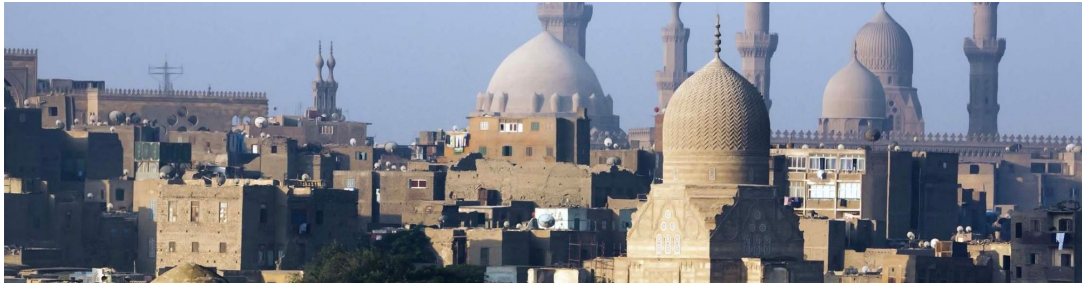
An update from CIFAS

As there is no legal requirement to screen against Home Office Immigration data either during pre-employment screening or for existing employees, and due to restrictions imposed on not viewing this data outside of the EEA, CIFAS has taken the decision to stop returning Home Office Immigration data on their Internal Fraud Database.

Verifile International Product Changes

- **New York Statewide search fee increase** On the 1st April 2019 the New York Legislature passed their 2019 - 2020 State Budget. The budget includes an increase to New York Office of Court Access (OCA) fee, also called NY Statewide fee. As a result, the additional fee for New York statewide search (applicable to criminal records search in the state of New York) has been increased to £95. This increase has taken effect on the 13th April 2019.
- **USA Government Business Registration Search** is now live. This is a new search, which confirms entity registration records or entity exclusion records in the SAM database - a registration framework for companies who want to work with the U.S. government.
- **Luxembourg Criminal Record Extract** If a conviction is found, the candidate will now have to collect the certificate in person from the Criminal Records Department in Luxembourg or authorise someone to do it on their behalf.

Africa and Middle East



Kenya

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Kenya Commits to Developing Data Privacy and Protection Framework

The Kenya government has announced its commitment to work with telecommunications companies and civil society advocates to develop a data privacy and protection framework that will help ensure that data from mobile phone use can be shared for positive social impact. The measures were announced at a regional forum on 'Mobile Data for Social Impact' held in Nairobi and attended by representatives of the governments of Ghana, Senegal, Sierra Leone, and Tanzania, in addition to telecommunications industry representatives and non-profits.

Nigeria

[Read more](#)

Nigerian Govt Releases Guidelines On Internet Access, Data Protection

Nigeria's National Information Technology Development Agency (NITDA) has released five guidelines to guide its operations as well as use and access to internet and IT infrastructure in Nigeria. The regulations include: "Rule-making Process of NITDA", "Nigeria Data Protection Regulation", "Guidelines for Clearance of Information Technology Projects", "Framework and Guidelines for Public Internet Access" and "Framework and Guidelines for Use of Social Media in Public Institutions". The regulations are available on the agency's website.

Asia Pacific



Australia

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A Global Roadmap to Personal Data Protection: Australia

Australian privacy law has national significance. The main privacy law contains 13 principles, which have the force of law by virtue of the Privacy Act 1988 (Cth). The federal privacy regulator is the Australian Information Commissioner.

[Read more](#)

Employee Who Failed To Disclose Criminal History Unfairly Dismissed

In *Kelvin Njau v Superior Food Group Pty Ltd* [2018] FWC 7626, an employer who attempted to backdate a requirement that employees have a clean police record was found by the Fair Work Commission to have unfairly dismissed an employee who had a criminal past. The employee argued that his dismissal was unfair because the employer had full knowledge of his criminal record for more than one year before his dismissal, and it was not a requirement of his employment that he have a clean criminal record. A lesson for employers is to carefully consider whether an employee's criminal history is relevant to the inherent requirements of the role.

China

[Read more](#)

A Global Roadmap to Personal Data Protection: China

Personal information protection does not have a long history in the Chinese legal system, but it is now one of the hottest legal topics in China. The legislation contains some broad, and sometimes confusing, definitions in respect of personal information protection. It also involves stringent regulations and severe legal penalties. The Chinese government is still exploring a feasible way to implement the relevant legal requirements, and this delays the process of issuing the implementing rules.

Hong Kong

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A Global Roadmap to Personal Data Protection: Hong Kong

Personal information is protected by the Personal Data (Privacy) Ordinance, Chapter 486, Laws of Hong Kong, enacted in 1995. It protects the whole lifecycle of personal data from their collection to destruction. The legislation obliges data users to comply with the six data protection principles (discussed below) and gives a data subject a right to know what personal data is held about them. The Ordinance protects the privacy of individuals in relation to personal data, rather than the privacy of individuals generally. Other types of privacy interests extend beyond the scope of the Ordinance, such as the interest in controlling entry to one's personal territory, the interest in freedom from interference with one's personal privacy, and the interest in freedom from surveillance or interception of one's communications. The law applies only to data users, not data processors. This means that where a data processor is retained by the data user, the obligation to comply with the law remains with the data user.

Indonesia

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Background Checks Under Indonesian Employment Law

New guidance is available to assist Indonesian employers with background checks and inquiries into criminal records, medical history, drug screening, credit checks, immigration status and social media. The document also notes that employers in Indonesia frequently carry out background checks on applicants, yet Indonesian employment laws do not require background checks and background checks that are already in place need to applicant consent.

Japan

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European Commission Adopts Japan Adequacy Decision

On January 23, 2019, the European Commission announced that it has adopted its adequacy decision on Japan (the "Adequacy Decision"). According to the announcement, Japan has adopted an equivalent decision and the adequacy arrangement is applicable with immediate effect. Prior to the adoption of the [Adequacy Decision](#), Japan implemented a series of additional safeguards designed to ensure that data transferred from the EU to Japan will be protected in line with European standards.

The European Commission has also released a [factsheet](#) and [Q&As](#) on the adequacy arrangement with Japan.

[Read more](#)

A Global Roadmap to Personal Data Protection: Japan

In 2016, Japan significantly amended its Personal Information Protection Act almost a decade and a half after its enactment in 2003 (the act went into full effect on May 30, 2017). The amendment was part of a global push to protect personal information, especially in response to the EU's General Data Protection Regulation (GDPR). In addition, Japan needed to update the law to cover such new developments as IoT (Internet of Things) and big data. One of the objectives of the amendment was to convince the EU to formally recognize Japan as providing "essentially equivalent" data protection as EU countries do. This status would allow EU countries to share personal data with Japan without requiring any further safeguards. Japan and the EU recently agreed on a framework that should pave the way for the EU to provide Japan with formal recognition as early as this fall.

New Zealand

[Read more](#)

A Global Roadmap To Personal Data Protection: Asia Pacific, Europe & USA - New Zealand

The protection of personal information is seen as important in New Zealand with robust privacy laws which are generally observed and enforced. New Zealand privacy laws were traditionally seen as "adequate" under the European Union's 1995 Data Protection Directive, however with the advent of the GDPR, New Zealand now lags behind the EU. Consequently, New Zealand's privacy laws are under review with changes designed to ensure that New Zealand is aligned with the EU and other major trading partners likely to come into force next year.

Philippines

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Global Roadmap To Personal Data Protection: Asia Pacific, Europe & USA - Philippines

The Data Privacy Act of 2012 or Republic Act No. 10173, with its Implementing Rules and Regulations, was promulgated in response to the freer exchange of personal data in the global stage and the setting of international standards for data protection. Prior to the Act, without so much as regulatory oversight for data collectors or protective measures for the data subject, the wealth of personal data available is subject to abuse and misuse — from the unmitigated use of contact details for purposes beyond those initially contemplated, to identity theft or security breaches of corporate data — to the detriment of the data subject's constitutionally guaranteed right to privacy. As this is a relatively new law in the Philippines and while initial enforcement measures have been implemented by the National Privacy Commission, it remains to be seen how robustly this new area of law will develop in the country.

Singapore

[Read more](#)

Singapore Tops Global Talent Rankings

The top three spots of the Global Talent Competitive Index (GTCI) have remained unchanged since last year, with Singapore leading in talent rankings, followed by Switzerland and the United States, respectively. New Zealand and Australia are the only other APAC nations to make the top 20. With a special focus on entrepreneurial talent, the report saw an emerging trend to stimulate entrepreneurial skills and futureproof employees. The GTCI report was in line with recent findings in a study by the Singapore Business Federation (SBF), which found that in the push for innovation in transformative times, businesses have identified manpower issues as a key hurdle.

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A Global Roadmap To Personal Data Protection: Singapore

With the endless march of technology and an increasingly connected world, protecting personal data is clearly more important than ever. In response, governments around the world have focused on enacting legislation to keep up with the fast pace of change. The EU's recent implementation of the General Data Protection Regulation (GDPR) is just the latest development in this crucial area of law. Outside the EU, however, there is little uniformity in how different regions and countries protect personal data. To help make sense of this, Meritas® has produced this guide by leveraging its top quality

member firms from around the world, specifically our firms in Asia Pacific, Europe and the USA. The guide employs a straightforward question-and answer format to be as simple and as easy to use as possible. The authors hope that this guide will provide readers with a convenient and practical starting point to understand a complicated yet vitally important subject to businesses everywhere.

Taiwan

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A Global Roadmap To Personal Data Protection: Asia Pacific, Europe & USA - Taiwan

Taiwan was an early mover in recognizing the importance of data protection and has had a personal information protection regime in place for over 20 years. Taiwan initially adopted what was then called the "Computer Processed Personal Data Protection Law" ("CPPDPL") in 1995. The CPPDPL applied only (1) to data used within a specified list of industries (e.g. banks, hospitals etc.) which were required to register as data users and (2) to data that was "computer processed" such that manually processed data was not protected. That original law was amended and replaced by the current Personal Data Protection Law ("PDPL"), which was enacted in 2010 and implemented in stages over the next few years after that.

Thailand

[Read more](#)

Legalization of Cannabis In Thailand

The Thai government is in the process of approving the legalization of cannabis for medical use and research. The approval will be a turning point in Thailand's zero-tolerance politics on drugs, and Thailand will be the first country in Southeast Asia to legalize cannabis. The new drug law will allow cannabis to be given to patients suffering chemotherapy side effects, Parkinson's disease, epilepsy, multiple sclerosis or cancer pain; and will allow medical doctors and Thai traditional healers to prescribe the medications under Thailand's Food and Drug Administration and Ministry of Health. Individuals will not be permitted to grow marijuana at home personally.

[Read more](#)

Thailand's Draft Personal Data Protection Act At Final Consideration Stage

Thailand's draft Personal Data Protection Act (PDPA), which was approved by the Council of State in December 2018, is now under consideration of the National Legislative Assembly (NLA), which will appoint a committee to finalize the details. Once the committee approves the draft, the NLA will consider their opinion, issue a final approval, and present it to the monarch to be signed into law. It will be published in the *Government Gazette* before becoming effective, which is expected sometime this year.

Europe



Europe

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GDPR: New Guidelines on Territorial Scope

The European Data Protection Board has adopted new draft guidelines on the territorial scope of the GDPR that provide clarification for both EU and non-EU based

companies to assess whether all or parts of their activities fall under the scope of the GDPR and to what extent they are subject to the application of the GDPR. The guidelines also clarify aspects that were controversial or misinterpreted in the six months since GDPR went into effect. The guidelines are subject to a public consultation before final adoption.

[Read more](#)

GDPR And Sharing Staff Information

A new article outlines the dangers of not meeting data protection laws when sharing staff information in corporate transactions. It addresses how all parties need to meet privacy concerns at every stage of a transaction: from the drafting of heads of terms and confidentiality agreements; through carrying out the diligence process and negotiating the purchase agreement and disclosure letter; and implementing post-deal integration. It cautions all parties to keep a record of the steps they have taken towards GDPR compliance, including security measures to protect data and the thought processes behind decisions.

[Read more](#)

Understanding the Layered Approach To International Data Transfers Under GDPR

In today's globalized world, there are many cross-border transfers of personal data, which are sometimes stored on servers in different countries. The European Data Protection Board recommends as best practice a "layered approach" to transfers when considering whether the third country provides an adequate level of protection and ensuring that exported data will be safeguarded in the third country. More information is available to understand when personal data is legally permitted to be transferred outside of the European Economic Area under the GDPR.

Austria

[Read more](#)

Exploring The EU's New Rules For The Free Flow of Non-Personal Data

While personal data flow is governed by GDPR, what are the new rules for the free flow of non-personal data? In an article, Robert Bond explains what the new European regulation by the Council of the EU will do to "bring down barriers to the free movement of non-personal data within the EU."

Bulgaria

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Bulgaria President Vetoes Local Law Implementing The GDPR

Bulgaria's Parliament passed its Personal Data Protection Act, yet Bulgaria's president vetoed the law, due to concerns regarding the regulated data processing for journalists, academic, artistic and literary expression. The law would have required journalists, academics, artists and writers, to consider the nature of the personal data; the impact the public disclosure of the personal data would have on the privacy of the data subject and his/her reputation; the circumstances under which the personal data have become known to the data controller; whether the data subject has contributed to the disclosure of his/her personal data and/or information on his or her personal and family life; and more. The legislation will be returned for additional changes by the Bulgarian Parliament.

France

[Read more](#)

CNIL Publishes Guidance On Data Sharing With Business Partners Or Data Brokers

The French Data Protection Authority (CNIL) has published guidance regarding conditions that need to be met by organizations to lawfully share personal data with business partners or other third parties, such as data brokers. The guidance sets forth five conditions: prior consent, identification of the partners, notification of changes to

the list of partners, limit to further sharing without consent, and notice to be provided by the partners at the time of the first communication to the individual.

[Read more](#)

One More Step To Ensure Consistency Of The New French Data Protection Law

The French Government has published an ordinance finalizing the alignment of the French Data Protection Law (FDPL) with the GDPR regulation. The main goal of the new ordinance was to simplify and ensure more consistency of the FDPL while correcting errors and omissions. Some key specificities of the new FDPL focus on territorial scope, post mortem right, age of consent, automated individual decision making, representation of data subjects and class action, and online Cookies information. The French Parliament is expected to adopt a final bill before May 2019.

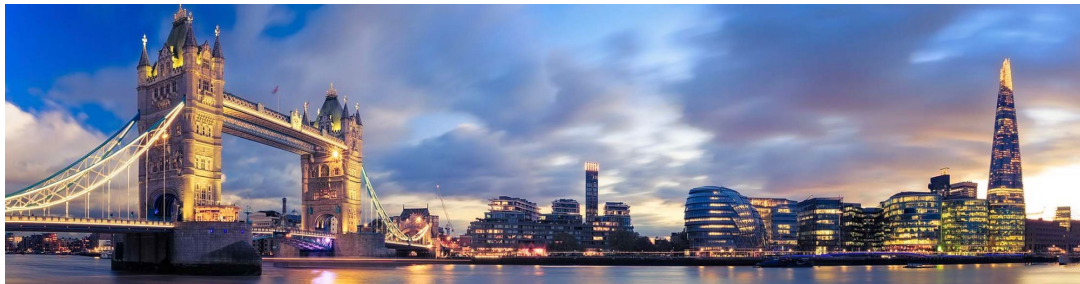
Spain

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Spain's New Data Protection Act Now In Force

The Organic Law 3/2018 on the Protection of Personal Data and Guarantee of Digital Rights (LOPDGDD) – which implements the GDPR in Spain – became official on December 7, 2018. The law addresses the processing of sensitive personal data and business contact data, explains how data protection officers are required, discusses the handling of children's data, and introduces a number of new digital rights for individuals that go beyond those provided in the GDPR, such as the right to privacy and use of digital devices in the workplace.

United Kingdom



United Kingdom

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GDPR Enforcement Actions, Fines Pile Up

AggregateIQ has been accused of violating the General Data Protection Regulation (GDPR) by using personal data of United Kingdom individuals to target them with political advertising messages on social media. The Information Commissioner's Office (ICO) has ordered the company to erase any personal data that is retained on its servers. Meanwhile, in France, La Commission Nationale de L'Informatique et des Libertés (CNIL) found that a mobile ad network illegally obtained the consent of more than 67 million people. The company was ordered to change its consent practice and purge all data collected. In other cases, fines ranging from 4,300€ to 400,000€ are being slapped on companies in violation of the GDPR. It is obvious that European Union regulators are wasting no time taking enforcement action and fining entities for violations.

Canada and Mexico



Canada

[Read more](#)

Canada's PIPEDA Consent Guidelines Now In Effect

Canada's **new guidelines** for obtaining consent under PIPEDA are now in effect. Last year federal Office of the Privacy Commissioner and the Alberta and British Columbia Offices of the Information and Privacy Commissioner jointly issued the guidelines, which outline how to get "meaningful" consent. The OPC will now apply the guidelines when looking at how companies obtained consent, and it has been reported that the guides are viewed by the regulators to have the force of law.

Mexico

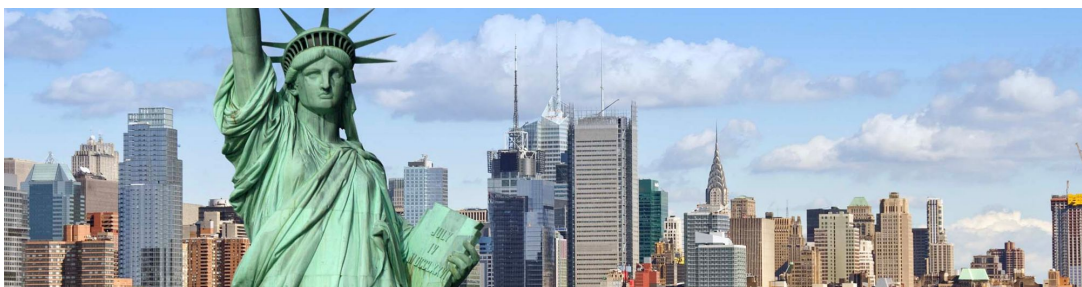
[Read more](#)

Cannabis Soon To Be Legal For Most Uses In Mexico

In April 2017-the Mexican Congress amended the Health Law to expressly authorize the use of cannabis and other narcotics for medical and scientific use. Most recently, on October 30, the Mexican Regulatory Agency (COFEPRIS) published the expected guidelines to establish the criteria for the appraisal of applications of authorizations for the commercialization, exploitation, and importation of products with broad industrial uses that contain cannabis and its derivative in concentrations less than 1% of tetrahydrocannabinol (THC).

One day after these guidelines were published, on October 31, the Mexican Supreme Court conformed jurisprudence related to the casual or recreational use of cannabis. In short, the Mexican Supreme Court decided that, in order to preserve the right to personal freedom, the individual use of cannabis for recreational or casual use should be authorized.

United States



United States

LEGAL:

Massachusetts Employers Beware – Denying An Internal Lateral Transfer Request May Now Constitute An Adverse Employment Action

In late January, the Massachusetts Supreme Judicial Court determined that denying an employee's request for an internal lateral transfer may constitute an "adverse

employment action” where the employee can demonstrate “material differences between [the] two positions in the opportunity for compensation, or in the terms, conditions, or privileges of employment.” State Police Trooper Warren Yee of *Yee v. Massachusetts State Police* filed the claim after he was denied a request to be transferred to a troop that patrols an area that could offer opportunities for overtime. Seven officers were approved transfer, however, all of whom were white and younger than Yee. Summary judgment was granted to the State Police, reasoning that the plaintiff did not suffer an adverse employment action. On appeal, it is up to the lower court to determine whether “there was a genuine issue of material fact whether the denial of Yee’s request for a lateral transfer was motivated by discriminatory animus.”

[Read more](#)

Walmart Firing Violated Arizona Medical Marijuana Law

A federal judge recently ruled that Walmart discriminated against a worker at an Arizona store when it fired the employee, a medical marijuana cardholder, solely due to a positive drug test. Carol Whitmire, of *Whitmire v. Wal-Mart Stores, Inc.*, obtained the card in 2013. She filed an incident report with Walmart after injuring her wrist while on the job in 2016 and was directed to visit an urgent care clinic. She also was asked to complete a post-accident urine drug test, which yielded positive results. She was suspended and eventually fired, later filing the suit, alleging wrongful termination and/or discrimination against in violation of various state laws.

[Read more](#)

New Law Requires More Robust Background Checks for DC Teachers

Educators in District of Columbia public and charter schools now are required to undergo more robust background checks under a new law passed by the D.C. Council. The School Safety Act of 2018, which was passed unanimously in late December, will take effect in the next school year. It also requires schools to alert future employers about sex misconduct incidents by former teachers if those employers call for references about those teachers. Job applicants will need to provide 20 years of employment history information when applying for jobs at D.C. schools. Officials must then search a national database of teacher license revocations before hiring a new teacher.

[Read more](#)

Clean Slate Law Offers Offenders a Fresh Start Without Public Criminal Record

In June, the Clean Slate Law could wipe out several hundred thousand old non-violent misdemeanor and summary convictions in Pennsylvania. Designed to help people who did their time, paid their fines and stayed out of trouble to gain housing and employment, the law passed the General Assembly with only two no votes. Under the Clean Slate law, records that now are available online through court dockets will be flagged and sent to the Pennsylvania State Police, who will make the final decision on removal from the docket. It is believed that physical records still will be maintained, but not available to the public. A similar law was passed in New York, but, unlike Pennsylvania’s automatic process, offenders there were required to petition the courts.

[Read more](#)

Delta to Pay \$2.3M to Settle Background Check Dispute

Although Delta Air Lines provides applicants with a multi-page form to meet the Fair Credit Reporting Act’s disclosure requirements, the fact that the company does not do this as a “clear and conspicuous disclosure ... in a document that consists solely of the disclosure” has cost it \$2.3 million. Delta Air Lines recently settled a class action lawsuit that involved 44,000 applicants, resulting in \$52.15 per class member, for failing to provide a stand-alone background check disclosure. The settlement is just one of many regarding background check errors, including Frito-Lay, which paid \$2.4 million to settle a similar case, and Target, which settled a case for \$3.7 million after its background check policy was found to have discriminated against African-American and Latino applicants.

[Read more](#)

Wal-Mart Hit With Certification of Massive FCRA Class Action

A recent class action that is being called the largest in recent history has been added to the growing list of Fair Credit Reporting Act (FCRA) claims, including PetCo, Stanford and Delta Airlines. Walmart has been under fire in a class action lawsuit in a federal district court in California, involving as many as five million members. Plaintiffs in the case allege that Walmart's background checks failed to satisfy the notice requirements of the FCRA when it did not properly and legally obtain authorization before performing a background check. The retail chain also included extraneous information on disclosure forms and procured consumer reports without first informing applicants of their rights.

[Read more](#)

No Standing, No Settlement?

In a recent decision involving the federal court requirement to assess Article III standing before approving a settlement agreement, the plaintiff filed a putative class action for purported violations of the Fair Credit Reporting Act (FCRA). The defendant moved to dismiss the case based on standing issues after a tentative settlement agreement was reached. The court, however, denied the motion and ordered the parties to submit the settlement agreement for review. On appeal, the defendant argued that the district court failed to evaluate standing before rendering a judgment, to which the Eighth Circuit agreed, remanding for an evaluation of the standing issues.

[Read more](#)

Reasonable Investigation Under FCRA: Two Times Might Not Be a Charm

Court case *Ponder v. Ocwen Loan Serv., LLC*, reinforces the requirement that furnishers of information to consumer reporting agencies (CRA) have a responsibility to conduct a reasonable investigation of any reported errors the first time they learn of the dispute. In this case, the plaintiff filed several claims against Ocwen, alleging that it reported inaccurate information to the CRAs about an account that was charged off due to a bankruptcy case prior to the date upon which serving rights were obtained. An initial investigation did not discover the error, however, after a complaint was filed with the Consumer Financial Protection Bureau (CFPB), it was determined that the plaintiff's accusations were accurate. The court held that Ponder's complaint was justifiable since the former investigation was deficient and unreasonable.

[Read more](#)

Employers: Keep FCRA in Mind When Drafting Arbitration Agreements

The outcome of *Alvarado v. Lowe's Home Centers, LLC*, serves as a reminder that employers seeking to arbitrate employee disputes need to draft arbitration provisions with the FCRA in mind, especially when employers engage in FCRA-covered reporting prior to the execution of arbitration agreements. The U.S. District Court for the Northern District of California heard arguments that a former employee of Lowe's accused the business of conducting background checks during the background screening process without being properly notified with the appropriate disclosures. The court then disagreed with the employer's argument that the claim accrued pre-employment and wasn't covered by the subsequently signed employment agreement that was intended to cover any controversy arising out of the plaintiff's employment or termination.

[Read more](#)

FCRA Class Action Survives Early Procedural Challenge

Sanders v. Global Radar Acquisition yielded a big Fair Credit Reporting Act (FCRA) decision recently. The putative class action involved a claim that the defendants failed "to obtain certification prior to furnishing a consumer report for employment purposes" – a violation of the FCRA. More specifically, consumer reporting agency Global HR was accused of lacking certifications from the Naples Hotel Group, where the plaintiffs were employed, that were required by the FCRA before providing reports. Although a "Notice and Acknowledgment" document was signed at the start of employment, the plaintiffs argued that Global HR invaded their right of privacy and that they were never provided with pre-adverse action notification required by the FCRA. The court found that the defendant was in violation of the FCRA and that the plaintiffs did, indeed, have Article III standing to sue.

[Read more](#)

Colorado Equal Pay Law Introduced

The Equal Pay for Equal Work Act recently was introduced by Colorado Senate Democrats, which contains a salary history ban and pay transparency requirements. Considered to be among the most aggressive pay laws in the nation, SB 19-085 would remove enforcement authority from the Colorado Department of Labor and Employment and allow a private right of action; require equal pay for “substantially similar work” based upon a composite of skill, effort and responsibility; and require that any wage differentials between employees be based upon specific specifications, among other provisions.

[Read more](#)

Strict Updates to Massachusetts’ ‘Ban the Box’ Law

Massachusetts, one of the first jurisdictions to adopt a “Ban the Box” law, has adopted a new criminal justice reform that altered the existing laws in three significant ways. First, the five-year period for the disclosure of misdemeanor convictions has been reduced to three years. In addition, employers are now prohibited from asking applicants about a criminal record that has been sealed or expunged. And finally, when requesting criminal record information from an applicant, employers must now include specific language regarding expunged records.

[Read more](#)

California Clarifies Salary History Law

California’s Assembly Bill 2282 offers some clarity surrounding a law that prohibits employers from asking job applicants for information about their salary history, but doesn’t prohibit employers from considering salary information that an applicant volunteers without any prompting. The new law defines the terms “applicant,” “reasonable request” and “pay scale.” It also clarifies that employers may ask about an applicant’s salary expectation for the position for which they have applied and that employers must base any new salaries for an existing employee on one of several specific factors.

[Read more](#)

California District Court Dismisses Class Action Challenging FCRA Disclosure Form

A putative class action that alleged violations of the Fair Credit Reporting Act (FCRA) was recently dismissed by the Northern District of California. In *Soman v. Alameda Health Sys.*, Jas Soman argued that the disclosure form used by Alameda Health Systems (AHS) violated the FCRA because it did not include “a clear and conspicuous disclosure” in writing that consisted “solely” of the disclosure. The employer argued that, under Article III, the text boxes that advised residents of certain states of their rights under state law amounted to a “bare procedural violation” without imposing any concrete harm. The Court dismissed the case, finding that Soman’s complaint, indeed, failed to allege an injury-in-fact.

[Read more](#)

The Ninth Circuit Adopts an Expansive Reading of the FCRA’s Provision Governing Background Check Disclosures

The number of federal class action lawsuits against employers alleging violations of the Fair Credit Reporting Act (FCRA) continues to be on the rise. More specifically, claims tend to target disclosures that are included with the employer’s job application, or if separate from the job application, those that include alleged extraneous text. In a recent class action suit, the Ninth Circuit held that the statute’s prohibition on including so-called “extraneous” information with the requisite disclosure extends into information about legal rights that job applicants have under state fair credit reporting laws. The plaintiff in *Gilberg v. Cal. Cashing Stores* was briefly employed by the business before filing a class action under the FCRA and California law. The case was dismissed, but later was reversed for judgment and was reinstated.

[Read more](#)

SALARY HISTORY

New Bill Seeks to Prohibit All New York Employers from Inquiring into Applicant Salary History

In the past, only New York state entities were prohibited from inquiring into an applicant's compensation history, but a new bill proposes a statewide salary history inquiry ban that will be applicable to private and public employers. Assembly Bill S01136 would "amend the New York Human Rights Law to make it an 'unlawful discriminatory practice' for 'any employer, prospective employer, labor organization, employment agency or licensing agency, or employees or agents thereof, to seek a salary history from a prospective employee for an interview or as a condition for employment.'" Under the law, current or prospective employees would be permitted to voluntarily disclose salary history, but only for the purpose of negotiating a higher salary.

[Read more](#)

Michigan Bars State Employer Inquiries into Salary History

Michigan Governor Gretchen Whitmer has signed a directive that prohibits state departments and agencies from asking about current or previous salaries until after extending a conditional offer of employment with proposed salary. Effective January 8, 2019, Executive Directive No. 2019-10 aims to ensure equal pay for equal work among state employees and also prohibits public employers from searching public records databases to obtain current or previous salary information about an applicant. The verification of salary information may be performed only if the applicant voluntarily provides the information or verification is required by applicable law.

[Read more](#)

IMMIGRATION STATUS

Worksite Immigration Enforcement Surges

Statistics released by U.S. Immigration and Customs Enforcement (ICE) have revealed that a dramatic surge of worksite enforcement actions have been carried out by Homeland Security Investigations (HSI). The trend, according to HSI Associate Director Derek N. Benner, is to "protect jobs for U.S. citizens and others who are lawfully employed, reduce the incentive of illegal migration, eliminate unfair competitive advantages for companies that hire an illegal workforce, and ultimately help strengthen public safety and national security." HSI completed 6,848 worksite investigations and 5,981 Form I-9 audits, along with making 779 criminal and 1,525 administrative worksite-related arrests in 2018.

[Read more](#)

IMMIGRATION STATUS DATA PROTECTION AND PRIVACY

Comprehensive Data Privacy Legislation Introduced in Massachusetts – Includes Private Right of Action Without a Need to Prove Harm

A consumer data privacy bill that could become effective in January 2023 has been introduced in Massachusetts that gives consumers the right to sue in the event their personal information or biometric data is improperly collected or distributed or for any other potential violation of the new law. The bill is one of many across the country aimed at regulating data protection issues, including Illinois's Biometric Information Privacy Act (BIPA) and California's new California Consumer Privacy Act (CCPA). SD 341 also would impose new compliance obligations on all businesses that collect Massachusetts consumers' personal information and that meet one of two revenue-related thresholds.

[Read more](#)

The CA Consumer Privacy Act: The NEW Elephant in the Room

Although the effective date of the California Consumer Privacy Act (CCPA) is set for January of 2020, it isn't too early to begin preparing for the new law, which is being called the standard in consumer privacy protection for California. The law includes the collection and sale of all personal information and applies to any resident of the state of California, not just consumers. A few key points to keep in mind: Along with the state's notice obligation, other new or expanded obligations apply to businesses; the CCPA applies to a broad spectrum of organizations doing business in California; and the

Attorney General's office is required to solicit public input on the regulatory process surrounding the implementation of the new law.

[Read more](#)

DRUG SCREENING

DOT Drug Testing Requirements for 2019

With the start of a new year comes the need for employers to review and update substance abuse testing programs, including random rates for the Department of Transportation (DOT) regulated employers. The Federal Transit Administration (FTA) has increased its annual random drug testing rate to 50% in 2019, while its random alcohol testing rate remains at 10%. United States Coast Guard (USCG) covered employees are seeing the minimum random drug testing rate and minimum alcohol testing rate both at 50%. Rates will remain the same for the Federal Aviation Administration (FAA), Pipeline and Hazardous Materials Safety Administration (PHSMA), Federal Railroad Administration (FRA) and Federal Motor Carrier Safety Administration (FMCSA).

[Read more](#)

Retail Workers Tested Positive for Drugs at the Highest Rate Last Year, Quest Study Shows

Quest Diagnostics has released data that shows that those in the retail industry had the highest positivity rate for illicit drugs, with transportation and warehousing not far behind. More specifically, positive tests in retail have risen from 2.7 to 3.2 percent for marijuana and from .14 to .2 percent for cocaine since 2015. Many employers in the industries have relaxed drug testing as a result of legalized marijuana and a tight labor market, which could be to blame for the increasing positive results.

[Read more](#)

The Number of People Testing Positive for Marijuana in Workplace Drug Tests is Exploding, Particularly in Public Safety and National Security Roles

Quest Diagnostics has found that positive marijuana tests are on the rise, increasing to 2.6% in the general workforce in 2017. More specifically, the study found that states that recently legalized use of the drug saw the greatest increase, including 43% of Nevada's workforce testing positive, 14% of Massachusetts' workforce testing positive and 11% of California's workforce testing positive. Those in safety-sensitive positions had the highest increase in marijuana uses, which presents obvious concerns.

[Read more](#)

Fake Urine and Drug Test Abuse

So much is changing regarding drug use, from increased cocaine and methamphetamine detection to the legalization of recreation and medical marijuana. And a new tactic, the use of fake urine, poses a new threat to drug testing. Composed of chemicals, creatinine, yellowing coloring and sometimes uric acid, this substance is used to fool drug tests. Purchased commonly at "head shops," truck stops, on the Internet and at other retailers, the product sometimes even comes with a securing device, allowing users to conceal it until needed.

[Read more](#)

Governor Signs Bill Legalizing Medical Marijuana in the U.S. Virgin Islands

The governor of the U.S. Virgin Islands has signed into law The Virgin Islands Medical Cannabis Patient Care Act, which allows qualified patients to obtain, possess and consume marijuana for therapeutic purposes. The bill also establishes legal dispensaries and facilities to cultivate, test and manufacture cannabis products. Gov. Albert Bryan Jr. (D) signed the bill because he believes "a properly regulated medicinal cannabis industry can provide relief to those seeking alternatives to conventional medicine and can also be an economic driver attracting new revenues for the Virgin Islands." This revenue is intended to fund drug rehabilitation, tourism projects, agriculture investments, work training and infrastructure. While discrimination against qualified patients in the workplace is prohibited, employers are advised to review and update substance abuse testing policies.

[Read more](#)

Drug Testing Florida School District Job Applicants is Tricky Business. Finally, Some Judicial Guidance

Following the case of *Friedenberg v. Sch. Bd. of Palm Beach Cty.*, school districts may no longer be able to justify blanket drug testing. Instead, there must be a connection

between the specific job's duties and a safety risk from drug use. Joan Friedenbergl applied for several positions in the Palm Beach County School District, none of which were safety-sensitive positions, but she refused mandatory drug testing, which would determine her eligibility for a conditional substitute teaching job. She filed a class action, but, when reviewed by the Eleventh Circuit as an issue of first impression, it was determined that the drug testing as applied to substitute teacher applicants was reasonable. The decision brings to light drug testing other school district job applicants that are not obviously linked to student safety. School districts would be wise to review written job descriptions, consider making conditional offers before requiring a drug test and become mindful of the balance between private and public concerns.

[Read more](#)

Federal Appeals Court Holds That Public School District May Drug Test Substitute Teacher Applicants

It was determined by a federal appeals court that a public school district may drug test applicants for substitute teacher positions. Such required testing, as demonstrated in *Friedenberg v. School Bd. of Palm Beach County*, does not violate the Fourth Amendment's prohibition against unreasonable searches and seizures. The plaintiff in the case applied for several positions within the school district, but was denied employment when she refused to submit to a drug test. The Court ruled that urine drug testing was "minimally invasive" and that the School District had a "compelling interest" in weeding out applicants who abuse drugs "in order to better achieve the basic safety and tutelary obligations of our schools."

[Read more](#)

Delaware Court Upholds Medical Marijuana User's Claims Against Employer

An employee who possessed a medical marijuana card was terminated from his position at Kraft Heinz when a drug test came back positive for the substance. The test was ordered after a shuttle wagon operated by the employee in Kraft Heinz's railroad yard derailed. The plaintiff in *Chance v. Kraft Heinz Foods Company* sued the business, alleging that it "violated the Delaware Medical Marijuana Act's (DMMA) anti-discrimination provisions, that he was wrongfully terminated under a public policy protecting medical marijuana users, and that Kraft Heinz discriminated against him under the Americans with Disabilities Act (ADA) and state disability law." A Delaware state court held that a private cause of action exists under the state's DMMA and confirmed that the federal Controlled Substances Act (CSA) does not preempt the DMMA.

[Read more](#)

New Jersey Federal Court Finds That Employee Medical Marijuana Use Need Not Be Accommodated at Work

The federal district court in *Cotto v. Ardagh Glass Packing, Inc.*, held that New Jersey employers are not required to accommodate an employee's use of medical marijuana under the New Jersey Compassionate Use Medical Marijuana Act (CUMMA). The plaintiff in the case was taking medical marijuana for a previous neck and back injury before taking a leave of absence due to a work-related injury. In order to return to work, he was required to pass a drug test, to which he requested an exemption. He was placed on indefinite suspension until he could pass a drug test. The court granted the employer's motion to dismiss the plaintiff's claims of disability discrimination, failure to accommodate, and retaliation that the plaintiff had asserted under CUMMA and the New Jersey Law Against Discrimination.

[Read more](#)

New Ruling on Medical Marijuana in the Workplace Clarifies Connecticut's PUMA Legislation

The plaintiff in *Noffsinger v. SSC Niantic Operating Company LLC* informed a prospective employer that she was qualified under the Connecticut Palliative Use of Marijuana Act (PUMA) before submitting to a drug test. Her job offer was rescinded when the results came back positive for THC because it "uses federal law which indicates marijuana is still illegal." The plaintiff sued, alleging the center violated PUMA's anti-discrimination provision regarding a qualified patients' use of marijuana. In 2017, the court concluded that the center was in violation of PUMA and again, in 2018, granted summary judgment in favor of the plaintiff, rejecting the center's argument that the federal Drug Free Workplace Act (DFWA) required the center to rescind the plaintiff's job offer.

[Read more](#)

Connecticut City Sued for Refusing to Hire Medical Marijuana Using Firefighter

Although Connecticut became the 17th state in the United States to approve medical marijuana in May 2012, an aspiring firefighter in the city of Bridgeport was denied employment when he disclosed his use of marijuana under a medical marijuana card. James Bulerin III was offered conditional employment as an entry-level firefighter pending his passing of all pre-employment screens. He received a letter denying employment due to the results of a drug test. A lawyer was hired, who filed a discrimination lawsuit against the city, declaring a violation of the state law, House Bill 5389, "An Act Concerning the Palliative Use of Marijuana" (PUMA).

[Read more](#)

Adult Use Recreational Marijuana is Coming to the Garden State

An agreement has been reached in New Jersey that will legalize, regulate and tax marijuana for adult recreational use. Although the proposed law allows zero tolerance policies to remain in place, employers in the state should brace for changes since they'll be prohibited from refusing to hire any person, employ any person or discharge or otherwise penalize any employee "because" that person uses marijuana, unless for a "rational basis." The proposed law also states that a failed drug test by an employee who lawfully uses marijuana shall not form the basis for refusal to employ or otherwise penalize that person (unless it puts the employer in violation of federal law or is caused to "lose a federal contract or funding."

[Read more](#)

Michigan Court Confirms that Public Employers May Enforce Zero-Tolerance Drug Policies

In a February 19 ruling in *Eplee v. City of Lansing, et al.*, the Michigan Court of Appeals used sweeping language to rule that a public employer is free to deny at-will employment to a medical marijuana cardholder who fails a drug test in violation of a zero-tolerance drug policy. The court reinforced that the Michigan Medical Marijuana Act (MMA) "does not provide a cause of action against a public employer for enforcing its zero-tolerance drug policy, because at-will employment is not a 'penalty' under the statute. The plaintiff in the case received a conditional offer of at-will employment, but lost her job because her drug screen revealed marijuana use.

[Read more](#)

Another State Finds No Federal Preemption of Its Medical Marijuana Law

A Kraft Heinz employee has been permitted to move forward with discrimination claims arising out of Delaware's medical marijuana statute, Delaware Medical Marijuana Act (DMMA). The worker, a medical marijuana cardholder, filed the suit after he was fired due to testing positive to marijuana following an accident in the company's railroad yard. Although marijuana remains an illegal Schedule I substance under the federal Controlled Substances Act (CSA), the court determined that both CSA and DMMA would apply, and relied on the Rhode Island decision in *Callaghan v. Darlington Fabrics Corp.* As such, the court determined that, because the DMMA has a specific anti-discrimination provision, the Delaware legislature must have intended to permit the employee to sue under the DMMA.

[Read more](#)

A New Ruling on the Arizona Medical Marijuana Act: Did Your Drug Testing Policy Just Go Up in Smoke?

The decision in *Whitmire v. Wal-Mart Stores, Inc.* has offered guidance for navigating Arizona's Medical Marijuana Act (AMMA). Wal-Mart employee Carol M. Whitmire, a qualified patient under AMMA, was instructed to seek medical treatment after injuring her wrist on the job. She also was asked submit a urine sample for drug testing, which was positive for marijuana metabolites. She filed a lawsuit against Wal-Mart when the store fired her, claiming a violation of the AMMA by discrimination against her for use of medical marijuana. The court held that medical marijuana card holders can sue their employers under the AMMA and employers cannot avoid liability by merely showing the employee tested positive because he or she had marijuana metabolites in their system.

[Read more](#)

Employers May Have to Accommodate Medical Marijuana Users Under Some State Laws

Although there are no laws specifically requiring employers to accommodate employees' use of marijuana for medicinal purposes while at work, employers in some states may not terminate employees for use outside of the workplace, even after a positive drug screen. Thirty-three states and Washington, D.C., now have a comprehensive medical marijuana program, according to the National Conference on

State Legislatures. Although it still is considered an illegal drug under the Controlled Substances Act, the current guidelines of the U.S. Department of Justice allows federal prosecutors to decide how and whether to prosecute marijuana-related crimes. In addition, each state offers individual governance regarding the use of medical marijuana and its intersection with employment. In one discrimination case, the court granted summary judgment to the plaintiff, finding that the employer violated Connecticut's medical marijuana law.

[Read more](#)

South America



Argentina

[Read more](#)

Resolution No. 4/2019: Argentine Data Protection Law Guidelines and Best Practices

The Argentine Data Protection Agency (DPA) recently issued Resolution No. 4/2019 "Guidelines and best practices regarding the application of Law No. 25,326". The outlines the criteria for the correct interpretation and implementation of the protection of personal data, including standards to be followed if the data owner requests access to its personal data collected through video surveillance systems; how biometric data of an individual will be considered sensitive data when it reveals data that may be discriminatory to the data owner; how minors may provide informed consent for the processing of their personal data taking into account their psychophysical characteristics, aptitudes and maturity; and more.

Argentina

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New Office Created to Handle Expedited Requests for Criminal Records Certificates

In an effort to expedite the processing of requests for criminal records certificates, Argentina has established a new National Register of Recidivism, which will reduce the time it takes to issue such documents to one hour. This office will be open from Monday to Friday, 1:00 pm to 5:00 pm.

Brazil

[Read more](#)

Brazil Enacts Measure Creating a Data Supervisory Authority; Delays Implementation of The LGPD

Former Brazil President Michel Temer, before leaving office, issued an executive order that has important ramifications for Brazil's recently enacted General Data Protection Regulation/ Provisional Measure. The order requires the creation of a National Data Protection Authority (ANPD), tasked with rulemaking, education and enforcement of the LGPD. Additionally, the legislation delays the effective date of the LGPD to August 2020. The newly created ANPD will have a multitier structure consisting of five commissioners, to be appointed by the Brazilian president. ANPD commissioners will be appointed to serve four-year terms; however, the initial commissioners will serve between two and six-year terms.

[Read more](#)

Next Steps on Brazilian Data Protection Regulation

Provisional Executive Order 869/2018 issued by former President Michel Temer created the National Data Protection Authority (ANPD), amended a few articles of the Brazilian General Data Protection Act (GDPA), and postponed the GDPA effective date for six months to August 2020. The next steps to the legislation will include a review by a joint committee of 13 senators and 13 representatives; a Bill of Law to be put for a floor vote in the House of Representatives; and moving the legislation to the Senate for a floor vote. The Senate can then accept, reject or amend the Bill of Law from the House or return it to the House for a new vote. If both the Senate and the House approve the MP, it will be signed into law by the President of Congress.

[Read more](#)

Brazil's DPA: It Isn't Over Until The Referee Whistles

Daniel Law partner Robert Daniel-Shores examines the road ahead for Brazil's new data privacy watchdog. Daniel-Shores discusses how the watchdog was created by a "last-minute push of a pen and without necessary resources." He also expresses reasonable concerns about whether the ANPD will be able to function appropriately and independently, as a data protection authority should. He adds: "In the country of football, we rely on the popular saying 'it isn't over until the referee whistles' to hope that the changes to the LGPD and ANPD will be properly discussed before the provisional measure's 120 days are over. An open dialogue will lead to productive suggestions for (re)structuring the Brazilian watchdog, so that Brazil has enforceable and proper data protection laws.

