



Data Retention and Security, and Recent Updates in Colorado Employment Law

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Welcome: Your Presenter



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A Slight Detour



4 Critical Things for Your “Contracts”

- Your business legal name
- Attorneys’ Fees – Mutual or in your favor + for Mechanic’s Lien
- Don’t Waive Mechanic’s Lien
- No Pay if Paid

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Agenda



Part 1: Data Retention and Security

**Record retention
requirements**

**Cloud v. onsite
storage**

Data Security

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Agenda



Part 2: Recent Changes in Employment Law

Family and Medical Leave - FAMLI

**Retirement Plan Requirements – CO
401K**

**Restrictive Employment
Agreements –
Non-Compete & Non-Solicitation**

**Other important
employment requirements**



Data Security Statistics

95

percent

Cyberattack
and human error

6

trillion

Cost of
cyberattacks
last year

39

seconds

Frequency of cyber
attacks



Data Security Statistics

14

seconds

Ransomware
attacks occur

10

percent

Of small businesses
suffer a cyber attack
each year

50

percent

U.S. will be the
target of worldwide
cybercrime over the
next 5 years



Record Retention Requirements

- **Federal Acquisition Regulation Subpart 4.7**
- **State of Colorado – Statutes**
- **Colorado Department of Labor and Employment**



Record Retention Requirements: Federal Acquisition Regulation

- **2 years**
 - Labor cost distribution cards
 - Petty cash records
 - Time attendance cards
- **3 years after final payment for most records and evidence supporting contract completion or performance**
- **4 years**
 - Most financial and cost accounting records
 - Most pay administration records
 - Most acquisition and supply records



Colorado Statute of Limitations/Repose

Colorado's Statues of Limitation – deadline to start litigation

- **1 year** libel/slander, fraud
- **2 years** construction defect/personal injury - from discovery of loss/injury
- **3 years** breach of contract
- **6 years** collection of debt on account



Colorado Statute of Limitations/Repose

Statute of Repose – absolute bar of litigation regardless of when the problem started

- **6 years** from substantial completion, can be extended 2 years
- **8 year maximum***



Storing Your Records: Onsite



- **Physical control**
- **Access without internet connection**



Storing Your Records: Cloud



Cloud storage

- **Data storage remote from office – disasters**
- **Ease of access – no physical hardware**
- **Requires strong internet connection**



Onsite Servers

Pros

- On premise location
- Consistent access
- Fixed-cost
- Security

Cons

- Upfront expenses
- Heavy tech support and maintenance
- Limited data space
- Data recovery



Cloud/Virtual Storage

Pros

- Scalability & flexibility
- Data recovery
- Maintenance
- Connectivity

Cons

- Security & privacy
- Compliance and data governance
- Recurring costs
- Offline access

The background is a dark reddish-brown color with a pattern of stylized, 3D-looking clouds. Each cloud has a white power button icon (a circle with a vertical line and a dot) on its surface. Thin, light-colored lines connect the clouds, suggesting a network or data flow. The overall aesthetic is modern and technological.

HYBRID:

**On-site and cloud-based
storage**



Data Security – Colorado Sources

- **Colorado Governor's Office of Information Technology**
 - Information Security Office
 - <https://oit.colorado.gov/standards-policies-guides/cybersecurity-and-information-security-guide/information-security-office>
- **State of Colorado Office of the Attorney General**
 - Data Breach Reporting and Data Protection Laws
 - <https://coag.gov/resources/data-protection-laws/>
- **Colorado Cyber Resource Center**
 - <https://colorado-crc.com/>



Data Security – Sources

- **Americas Small Business Data Center – America's SBDC**
 - <https://americassbdc.org/cybersecurity/resources/>
 - Denver Metro SBDC
 - Denver Metro Chamber of Commerce
 - Phone: 303-620-8076
 - Email: info@denversbdc.org
 - Web Site: <http://www.denversbdc.org>
- **CNET**
 - <https://www.cnet.com/>



Dangers of Public Wi-Fi

FEB 07, 2023

'Haunts me to this day' — Crypto project hacked for \$4M in a hotel lobby

The co-founder of Webaverse said they somehow got their crypto hacked from their Trust Wallet during a meeting with two people claiming to be investors.



Dangers of Public Wi-Fi

Passengers Exposed to Hacking via Vulnerabilities in Airplane Wi-Fi Devices

Researchers have discovered two potentially serious vulnerabilities in wireless LAN devices that they say are often used in airplanes.



Dangers of Public Wi-Fi

Internet users urged to avoid unsecured Wi-Fi hotspots

Confidential banking details and passwords can be easily hacked using unprotected WiFi points, warn cyber cell officials; social media campaign on to sensitise people about the risk

February 05, 2023 09:37 pm | Updated 09:37 pm IST - Kozhikode



Dangers of Public Wi-Fi

Last updated: 04:03 PM ET, Sun June 26 2022

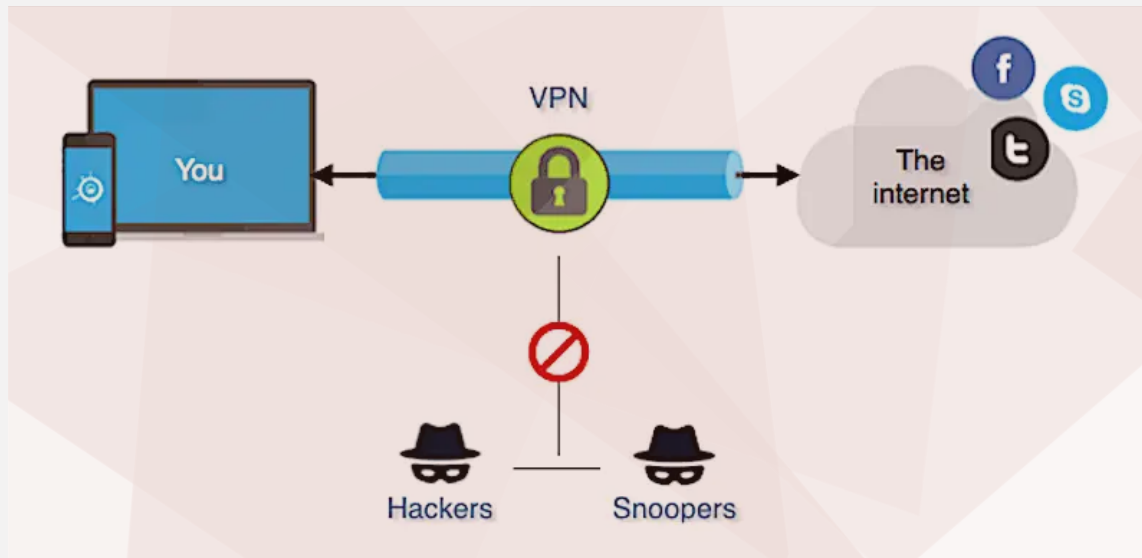
Research Shows 25% of Travelers Hacked Via Public Wi-Fi While Abroad

TRAVEL TECHNOLOGY | LAURIE BARATTI | JUNE 26, 2022



What is the solution?

- **How to keep your data secure on public networks?**
- **Virtual Private Network (VPN)**





How to keep your data secure on public networks?

- **Verify the network**
- **Use multi-factor authentication where possible**
- **Turn off sharing preferences**
- **Implement access control**



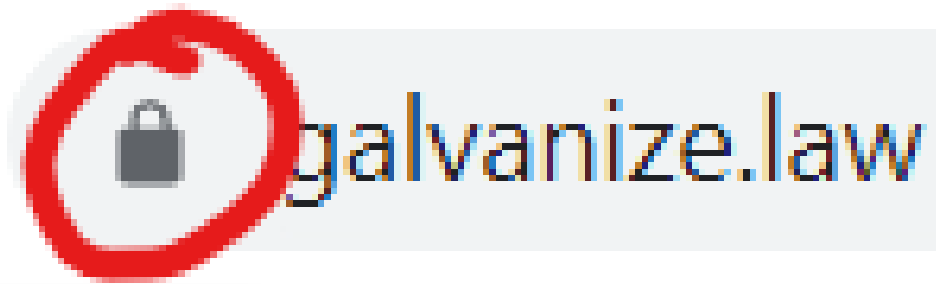
How to keep your data secure on public networks?

- **Only use websites with HTTPS at the beginning**
 - Example: <https://www.galvanize.law/>



How to keep your data secure on public networks?

- Look for the padlock symbol at the beginning of search bar to show secure connection





How to keep your data secure?

- **Antivirus software**
- **Keep firewall enabled**





Protecting Your Data

- Redundant data protection – hybrid cloud/on-site
- Train employees – email & trusted websites
- VPN
- Antivirus & firewall

Part 2:

Welcome to the new pro-employee state of Colorado





Colorado: The Pro-Employee State

- **Family and Medical Leave Insurance (FAMLI)**
- **CO 401K - Colorado SecureSavings**
- **Non-compete/non-solicitation changes**
- **Other pro-employee landmines**



FAMLI: Details



- **Premiums 2023**
- **Benefits 2024**
- **Partial wage replacement**
- **12-16 weeks of leave per year**

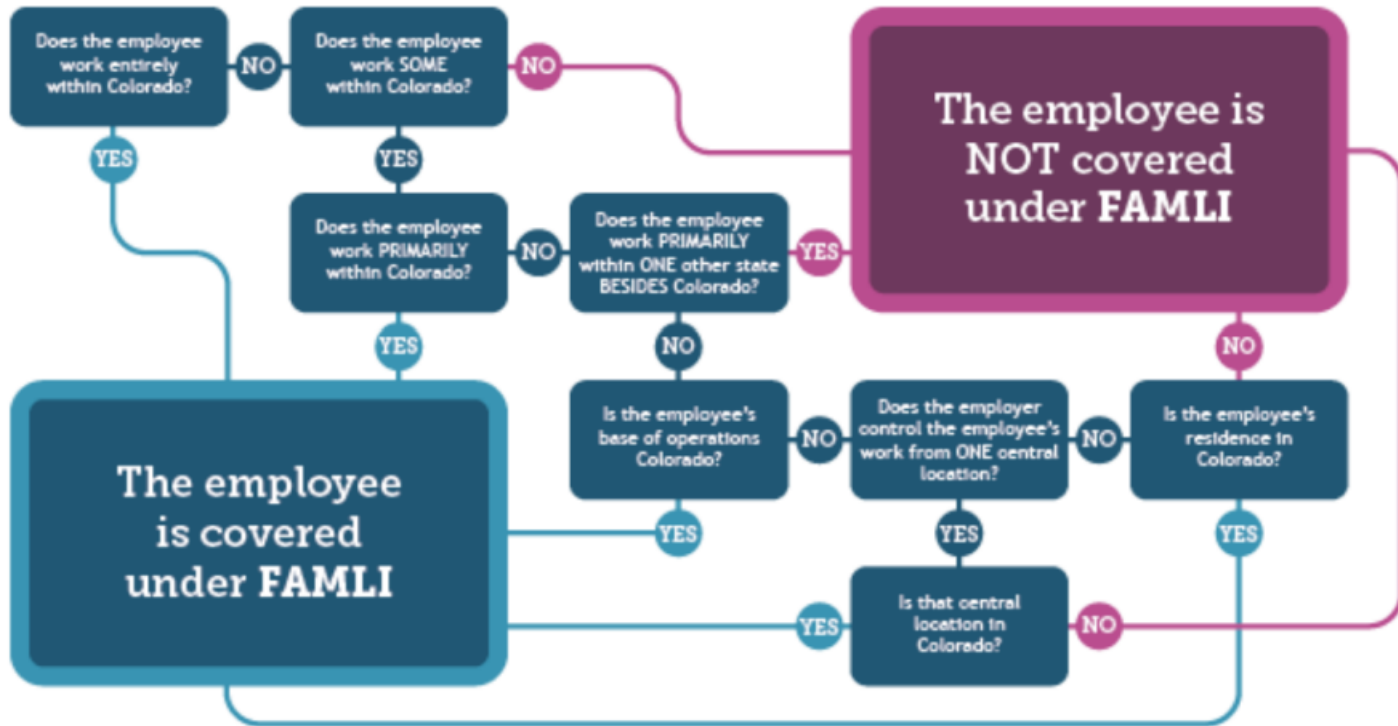


FAMLI: Structure and Function



- **Unemployment insurance or short-term disability**
- **Not required to use PTO before using FAMLI benefits**
- **Runs concurrently with Federal FMLA**
- **Employers pay FAMLI premiums quarterly**

Is this employee covered under **FAMLI**?





FAMLI: Structure and Function

- **1+ employees**
- **10 or more employees - Employer pays ½ of premium**
- **Self-employed individuals (optional)**
- **.9% of ALL compensation**
- **Opt out**
- **No retroactive deductions**
- **<https://content.govdelivery.com/accounts/CODLE/bulletins/3513588>**



FAMLI: Compliance Timeline

- **January 1, 2023**
 - Register via FAMLI+ Employer portal
 - Display FAMLI workplace poster or notice
- **March 31, 2023**
 - Pay Q1 premium
 - 30-day grace period (April 30, 2023)
- **October 31, 2023**
 - Submit private plan applications for refund

401K and SecureSavings



<https://coloradosecuresavings.com/employers/program-details>



Colorado SecureSavings Program: CO 401K

- **January 1, 2023:**
 - State sponsored 401K for all Colorado employees whose employers do not offer a retirement plan
- **Early 2023 – Employers receive notice to register**
- **Eligibility:**
 - Established business 2 or more years,
 - 5 or more employees, and
 - No current retirement plan



How it works

- **Once enrolled employees have 30 days to opt out or customize their contribution amounts**
- **Automatic contributions after tax 5% compensation**
- **Contributions increase 1% (up to 8%) each January unless adjusted by employee**



Employers should not:

- **Set up employees' accounts**
- **Help employees pick investments**
- **Manage or advise employees' accounts**
- **Make to employees' accounts – no matching**



CO 401k Deadlines: Register or File Exemption

- **50 or more workers: March 15, 2023**
- **15-49 workers: by May 15, 2023**
- **5-14 workers: June 30, 2023**



CO 401K Non-Compliance: Penalties

- **Up to \$100 per employee**
- **Maximum of \$5,000**





Non-Competes & Non-Solicitation Agreements

- **New law August 10, 2022**
- **Non-competes after 8/10/22 void if:**
 - **restricts the right of any person to receive compensation for performance of labor for any employer**





Non-Compete/Non-Solicit

- **Not retroactive**
- **Choice of Law Provision - Colorado**
- **Applies to “workers”**
 - **Application to Independent Contractors**
- **Exceptions – too much uncertainty**



Non-Compete/Non-Solicitation – post August 2022

THOU
SHALT
NOT



Exceptions: Types of Agreements Still Allowed

- **Agreements designed to protect trade secrets**
 - Agreement must be no broader than necessary to protect the employer's "legitimate interest in protecting trade secrets."
- Provisions requiring the **repayment of a scholarship** provided to an individual working in an apprenticeship



Types of Agreements Still Allowed

- Covenants for the **purchase and sale of a business** or the assets of a business
- Reasonable confidentiality provisions (**Non-Disclosures**) that do not prohibit:
 - Info that is reasonably ascertainable to the public
 - Info pertains to the workers general training, knowledge, skill or experience



New Notice Requirements

- Even if an employee qualifies for one of these exemptions, you must give:
 - **advance notice** to an employee
 - **time to review** the proposed noncompetition or non-solicitation agreement



New Notice Requirements

- Employer obligated to provide additional copy of the terms of the agreement
- Once per calendar year at the worker's request



New Notice Requirements

- **For the noncompetition or non-solicitation agreement to be enforceable, the Notice must:**
 - **Be in a separate document**
 - **Reference the restrictive covenant by name**
 - **State that the agreement contains the restrictive covenant**



New Notice Requirements

- Identify where the restriction is located within the agreement
- Contain a copy of the agreement
- Be in “clear and conspicuous terms” in the same language used to discuss the worker’s performance
- Signed by the worker



Restrictive Employment Agreements: Penalties

- Heavy fines for attempting to enforce or present “void” non-compete or non-solicit agreements
- **Up to \$5,000 for each worker or prospective worker**
- **Injunctive relief**
- **Actual damages**



Criminal Liability



- **Class 2 misdemeanor**
- **120 days in prison and/or**
- **\$750 fine**



Child Support Reporting

- **Effective in Colorado in July 2021**
 - New Hire Reports
 - Independent Contractors if no FEIN

Because *Kids* Matter Most
Colorado State Directory of New Hires



I-9 Verification

- Employers must verify the identity and eligibility to work of every employee they hire
- No longer required to keep copies of documents reviewed to comply with I-9 verification
- Must retain I-9 forms for **three years after the date of hire or one year after employment ends** (which ever is greater)
- No I-9 for independent contractors



Credit Checks – Limits – Can Pre-Employment Check If . . .

1. Your business is a bank or financial institution;
2. There is a law that requires it;
3. The credit check is **directly related to the job** position in which the candidate is applying.



Reference Checks

- **Get a Release and Waiver**
- **Reference Check should include:**
 - **Calling references from former employers**
 - **Verifying credentials (especially education and job experience)**
 - **Obtaining criminal and driving records, if relevant**
- **Can you give a former employee an honest Review?**
 - **Yes, but...**
 - **Want to avoid risk of defamation**
 - **Generally, no duty to disclose unfavorable information**



Background Checks

– New and Current Employees

- **Colorado Chance to Compete Act (“Ban the Box”)**
 - No questions about criminal activity
 - Do Not discourage individuals with criminal record from applying: job ads or applications
 - Do Not asked on a job applications about criminal history
- You can get a criminal background from public source



Discrimination

- **Equal Pay for Equal Work Act - January 1, 2022**
 - Do not ask about salary history or previous earning history
 - Notify existing employees about job openings and opportunities for promotions



Job Posting Requirements

- **The rate of compensation**
 - Salary/hourly rate
 - Range - lowest - highest pay;
- **General description - bonuses, commissions, or other compensation;**
- **A general description of all benefits offered with the position**



Discrimination

- **25+ employees** – do not discriminate on basis of marriage
- **15+ employees** – do not discriminate against applicants or employees based on legal off-duty activities



Discrimination

- **Discriminatory hiring question topics – Do Not Ask:**
 - Disability, race, creed, color, sex, sexual orientation, gender identity, gender expression, religious, age (40+), national origin, or ancestry
- **Age – do not need to ask when graduated high school**
- **Dependents, marital status, childcare arrangements**
- **Height, weight, physical characteristics**



Wage Claim Act

- Employers Must: pay employees with **their earned wages in a timely manner**
- Notice if deductions from final paycheck
- Penalties increased
- Strong anti-retaliation provisions added



“PHEW” – Protected Health/Safety Expression & Whistleblowing

- Employers **cannot** discriminate, take adverse action, or retaliate against a worker for raising a reasonable concern about workplace health and safety violations
- Prior law limited: public health emergency
- Now **“any reasonable concern about workplace violations”**



Nursing Mothers' Accommodation

- **1 or more employees**
- **Provide reasonable unpaid break time or paid break time, mealtime, or both, to allow employee to express breast milk for nursing child**
- **Provide a private place (not toilet)**
- **Must allow each day, for up to two years after child's birth**



QUESTIONS?





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