

CONTRACTS AND CONTRACT MANAGEMENT

2024 KBA Corporate House Counsel CLE Seminar

Daniel E. Hancock | Fultz Maddox Dickens PLC

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SESSION TOPICS

- supplier codes of conduct
- ADR clauses
- data security
- contract management systems

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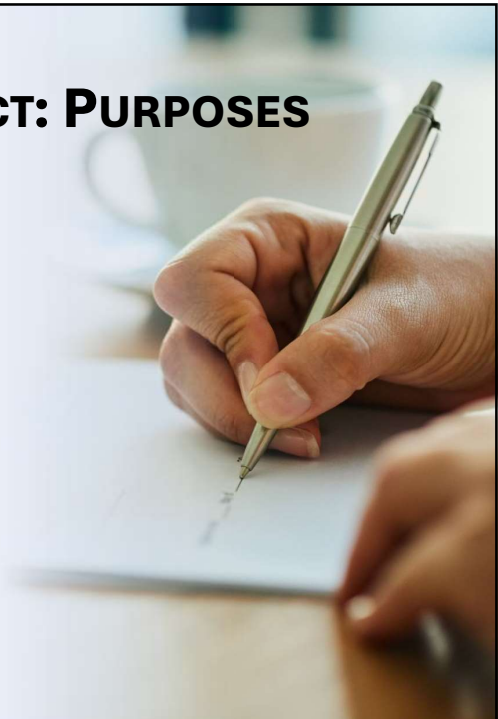
SUPPLIER CODES OF CONDUCT



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SUPPLIER CODES OF CONDUCT: PURPOSES

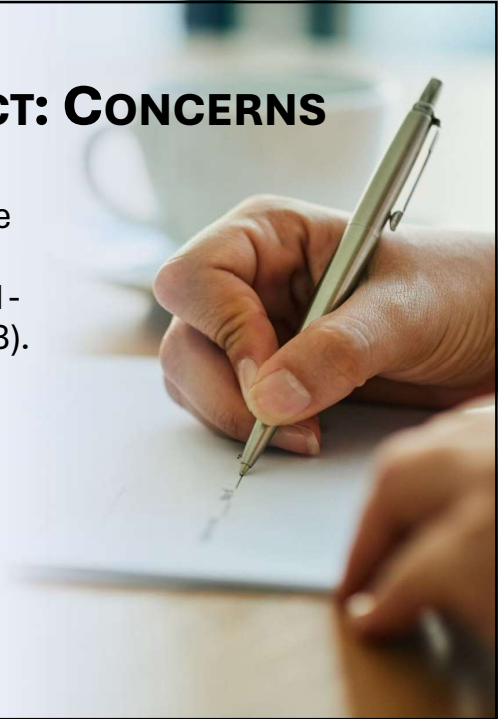
- sets expectations
- protects the company's reputation (but that can be a double-edged sword)



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SUPPLIER CODES OF CONDUCT: CONCERNS

- Publishing a code of conduct does not create a duty to any third party to abide by it: *Atmos Energy Corp. v. Honeycutt*, 2011-CA-000601-MR, 2013 WL 285397 (Ky. App. Jan. 25, 2013).
- Having a code of conduct does not create a binding obligation for suppliers to abide by it, unless your contracts require them to do so.



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ALTERNATIVE DISPUTE RESOLUTION CLAUSES



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ADR CLAUSES: KEY CONSIDERATIONS

- cost
- speed/efficiency
- discovery
- prevention of class or collective action
- arbitrator selection
- appellate rights
- confidentiality

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ADR CLAUSES: THE KENTUCKY ANGLE

- KRS § 417.200: Kentucky Arbitration Act
 - If under KY Arbitration Act, **must** refer to arbitration occurring within Kentucky to be enforceable. *Ally Cat, LLC v. Chauvin*, 274 S.W.3d 451 (Ky. 2009).
 - If ADR clause specifically provides that disputes are governed by FAA, KY Arbitration Act and *Ally Cat* do not apply. *MHC Kenworth-Knoxville/Nashville v. M & H Trucking, LLC*, 392 S.W.3d 903 (Ky. 2013).
- KRS § 336.700(3)(a)
 - Employers may condition future/continued employment on agreement to arbitrate or mediate claims.
 - 2019 statute applies retroactively.

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DATA SECURITY



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DATA SECURITY: CONSIDERATIONS



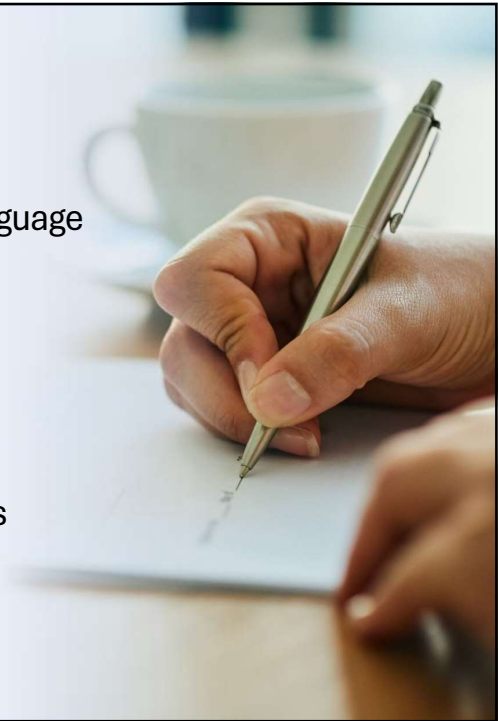
- What level of concern does the nature of the contract require?

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INFORMAL FRAMEWORK

How much should I focus on data security language in a contract?

- Tier 1: PII or PHI
- Tier 2: Proprietary or sensitive company information
- Tier 3: Information that is not sensitive or has already been disclosed

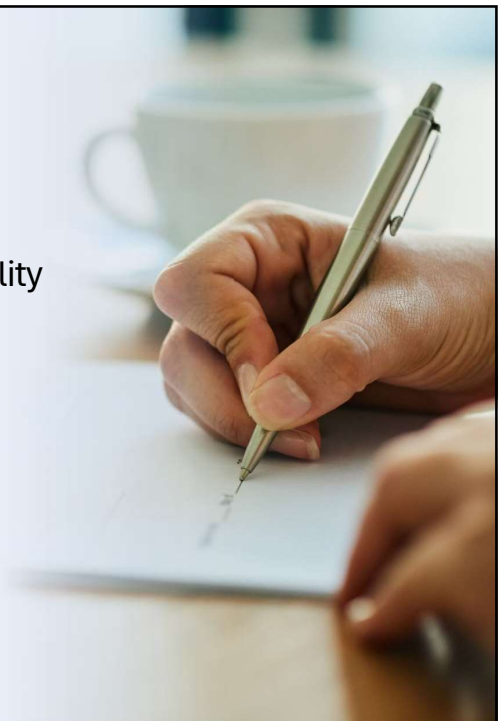


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DATA SECURITY, TIER 1

Federal Personal Data Privacy Laws

- Health Insurance Portability and Accountability Act (HIPAA)
- Gramm-Leach-Bliley Act
- Family Educational Rights and Privacy Act
- ... *and many more!*



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DATA SECURITY, TIER 1

State Personal Data Privacy Laws

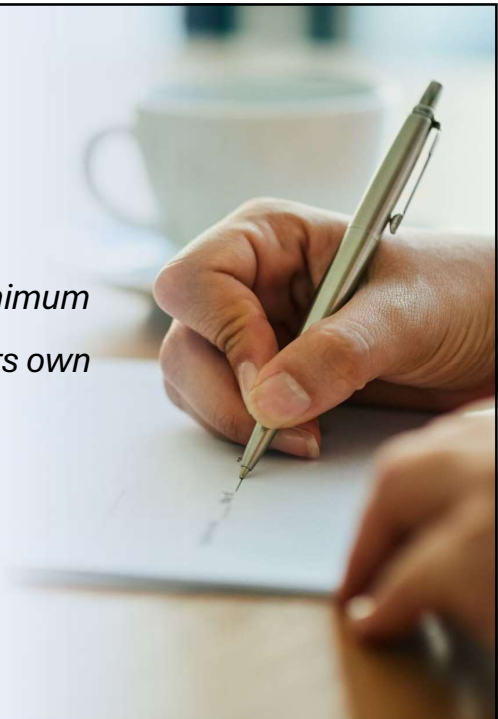
- 12 out of 50 states have comprehensive personal data privacy laws
 - It's not just California
- Every state has laws requiring personal data breach notification in certain circumstances
- Kentucky: data breach notification law, but no comprehensive personal data privacy law
 - Senate Bill 15 (currently in committee)



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DATA SECURITY, TIER 2

... because “Supplier shall use reasonable measures to protect Company’s data, at a minimum the same measures Supplier uses to protect its own data” leaves too much to chance.



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DATA SECURITY: CONSIDERATIONS

- What level of concern does the nature of the contract require?
 - Types of data
 - Value of contract
- Beware of acronyms!
- Breach notification
- Indemnification
- Limitation of liability clauses

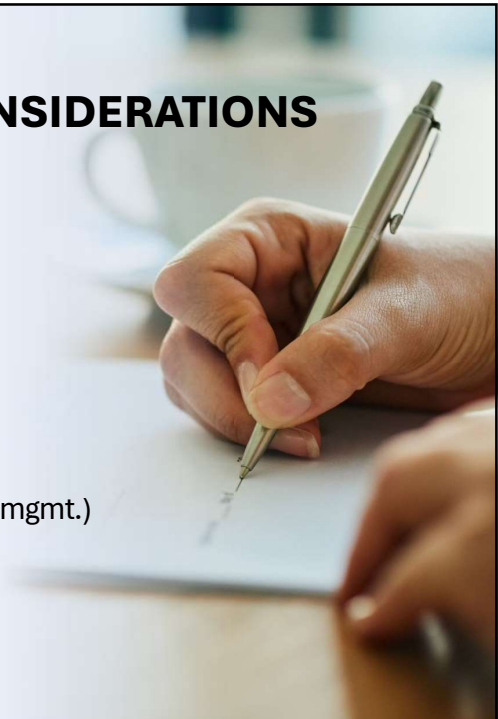


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DATA SECURITY: VENDOR CONSIDERATIONS



system update
 antivirus
 policies
 training
 VPN
 MFA
 filtering
 encryption
 SIEM (system info. and event mgmt.)
 backup
 cyber insurance



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CONTRACT MANAGEMENT SYSTEMS

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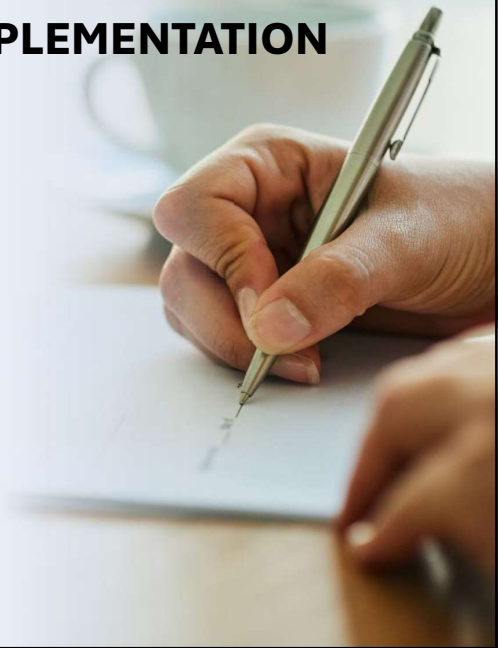
CONTRACT MANAGEMENT: 4 GOALS

1. Contracts are structured properly and appropriately reviewed
2. Company is aware of its contractual obligations
3. Objectives of contracts are known and realized
4. Contract weaknesses are recognized and corrected

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CONTRACT MANAGEMENT: IMPLEMENTATION

- identify key stakeholders
- initiation
- drafting and negotiation
- approval and execution
- retention
- administration
- amendment
- renewal/termination



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QUESTIONS?

- Get in touch:
Dan Hancock | Fultz Maddox Dickens PLC
dhancock@fmdlegal.com | 502-588-2022
- Get the slides:



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