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September 2012

Legal Alert: Additional Protection of Social Security Numbers

On August 14, 2012, Governor Cuomo signed two amendments to the New York General Business Law Section 399-dd. The amendments, commonly known as the Social Security Number Protection Law, provide additional safeguards to the protection of employees' social security numbers. The new laws will be codified as Section 399-ddd of the N.Y. General Business Law. The first amendment will be effective on November 12, 2012. The second amendment will be effective on December 12, 2012.

The Two New Laws Generally

The first amendment forbids employers from hiring inmates for any position that would allow them access to the social security numbers of other individuals. Employers must comply fully with this new rule to avoid penalties as there are no exceptions contained in the law.

The second amendment is more broadly applicable to employers. The new law prohibits employers from requiring employees or customers to disclose any part of their social security number. The law also proscribes employers from denying access to services or privileges if an employee or customer refuses to disclose their social security number. Employers should note that disclosure of part of the social security number, including disclosure of the last four digits, is prohibited. The law does not apply to social security numbers that are sufficiently encrypted by the employer.

General Exceptions to Disclosure or Use of Social Security Number

There are exceptions to the law prohibiting employers from requiring disclosure of an individual's social security number. The law does not apply to situations where disclosure is required by state or federal law. An employer may request and use a social security number for internal verification or fraud investigation. The social security number may be requested and used for tax compliance purposes or for collecting child or spousal support.

Employment Purposes Exception

There is an exception for situations where the social security number is used for purposes of employment. The statute gives examples such as where the number is used in the course of administration of an employee claim, during termination or retirement, for an unemployment claim, or for benefits information.

Employers should be aware that this exception does not necessarily cover the hiring process. The language of the new law presupposes an employer/employee relationship for the employment purposes exception to apply. While there is also an exception for request and use of an individual's social security number for consumer and investigative consumer reports, this exception only applies to background checks conducted by a third-party consumer reporting

agency. This means employers should refrain from asking for an applicant's social security number for purposes other than background check authorization forms.

Express Consent Exception

The new amendment does not prevent an employer from acquiring or using an employee's social security number if the employee gives express consent. Employers should note that even where the employee voluntarily discloses their social security number, all other current laws protecting employee social security numbers are still effective. For example, where an employee voluntarily discloses their social security number, an employer may not use it on any identification card granting access to facilities or privileges. See N.Y. Gen. Bus. Law §399-dd.

Penalties for Violations

The penalties for violations of either of the two new laws results in a monetary fine. For a first violation, a fine of up to \$500 per breach may result. If a second violation occurs, the fine may be up to \$1,000 per breach. There is no private right of action, which means only the Attorney General may enforce a breach of Section 399-ddd.

Employers are urged to develop procedures to ensure compliance with these new laws before the effective date. Such procedures may involve encrypting all employee social security numbers upon access to the number. Where an employer can show the breach resulted in an unintentional violation despite best efforts in maintaining adequate security procedures, the incident will be less likely to result in a violation of Section 399-ddd.

Effective Date

The first amendment, regarding inmate access to social security numbers, will be effective on November 12, 2012. The second amendment, pertaining to disclosure of social security numbers, will be effective on December 12, 2012.

This alert is meant to provide general information only, not legal advice. If you have questions about whether a particular expense can be deducted from an Employee's wages, please contact Judith Moldover at (212) 219-1800 ext. 250 or visit our website at www.lawyersalliance.org for further information.

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