

## New York Tightens Protections on Social Security Numbers

By Joseph J. Lazzarotti

August 20, 2012

A person may not be required to disclose or furnish his or her Social Security Number (SSN) for any purpose under a new law signed by New York Governor Andrew Cuomo. The new law safeguarding SSNs (A.8992-A/S.6608-A) applies to employers and certain other entities in the state. It adds new section 399-ddd to the General Business Law of the Empire State and becomes effective December 12, 2012 (120 days from enactment). Businesses must review their practices with employees, customers and other individuals in situations where all or a part of the Social Security Number is involved.

Under the new law, SSN includes not only the nine-digit number issued by the Social Security Administration, but also "any number derived from such number," unless the number is encrypted.

Unless one of the exceptions below applies, requiring employees or customers to use the last four digits of their SSN as part of an identification number, for example, will be unlawful.

Exceptions include:

- The individual consents to the acquisition or use of his or her SSN (this likely means a **voluntary** consent);
- The SSN is expressly required by federal, state or local law or regulation;
- The SSN is used for internal verification or fraud investigation;
- The SSN is requested for credit or credit card transaction initiated by the consumer or in connection with a lawful request for a consumer report or investigating consumer report (in addition to permissible background checks under the Fair Credit Reporting Act and New York law, this provision also may cover corporate credit card programs, frequently used by companies to better manage business expense reimbursement);
- The SSN is requested for purposes of employment, including in the course of administration of a claim, benefits, or procedure related to employment, such as termination from employment, retirement, workplace injury, or unemployment claims;
- The SSN is requested for tax compliance, collecting child or spousal support, or determining whether a person has a criminal record; and
- The SSN is requested by an authorized insurance company for purposes of furnishing information to the Centers for Medicare and Medicaid Services (this likely captures the reporting requirements under Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007).

The law does not provide for a private right of action; it is enforced by the State Attorney General. A civil penalty of not more the \$500 per violation may be imposed for a first offense, \$1,000 for a second offense. However, the law suggests that so long as reasonable measures have been adopted to avoid a violation, unintentional, bona fide errors will not result in penalties.

This is a general summary of the changes included in the new law. Jackson Lewis attorneys are available to answer inquiries regarding this and other workplace developments.

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