



Workplace Privacy, Data Management & Security Report

Posted at 5:40 AM on August 19, 2012 by Joseph Lazzarotti

New York Tightens Protections on Social Security Numbers

New York takes [another step](#) toward safeguarding Social Security Numbers (SSN), this time limiting certain entities, including employers, from requiring a person to disclose or furnish his or her SSN for any purpose. [Signed into law by Gov. Andrew Cuomo on August 14, 2012](#), the new law ([A.8992-A / S.6608-A](#)) adds a new section 399-ddd to the General Business Law of the Empire State, that becomes effective 120 days from enactment (December 12, 2012). Businesses will need to revisit their practices with employees, customers and other individuals in situations where all or a part of the Social Security Number is involved.

There are two important points to note about the law: (i) the definition of SSN; and (ii) the exceptions.

Under the new law, SSN includes the 9-digit number issued by the Social Security Administration, but also "any number derived from such number," unless the number is encrypted. So, for example, 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 will become unlawful later this year.

Here are some of the exceptions:

- The individual consents to the acquisition or use of his or her SSN (*of course, while not expressly stated in the statute, a court would likely interpret this provisions to mean 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 recent 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 Attorney General of the State and carries a civil penalty for a first offense of not more the \$500 per violation (\$1,000 for second offenses). However, the law seems to suggest that so long as reasonable measures have been adopted to avoid a violation, unintentional, bona fide errors will not result in penalties.

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