

New York Restricts Use of Social Security Numbers

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A person may not be required to disclose or furnish his or her Social Security Number (SSN) for any purpose under new section 399-ddd of New York's General Business Law, effective December 12, 2012. The new law safeguarding SSNs applies to employers and certain other entities in the state. Businesses must review their practices relating to employees, customers and other individuals in situations where all or a part of the SSN is involved.

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 than \$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.

For more information about the new law, please contact a member of the Privacy, Social Media and Information Management practice or Joseph J. Lazzarotti, at (973) 538-6890 or LazzaroJ@jacksonlewis.com, or the Jackson Lewis attorney with whom you regularly work.

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