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Additional Employer Requirements Regarding Social Security Numbers and Other Personal Information

In furtherance of its goal to reduce the number of identity theft crimes, the New York State legislature recently amended the New York Labor Law by including provisions designed to ensure an employer's responsible handling of employee social security numbers and other personal identifying information. N.Y. Lab. L. § 203-d. Those provisions took effect January 3, 2009, and they prohibit employers from doing the following:

1. publicly posting or displaying an employee's social security number;
2. visibly printing an employee's social security number on any identification badge or card, including a time card;
3. placing an employee's social security number in any file with unrestricted access; and
4. communicating an employee's "personal identifying information" to the general public.

"Personal identifying information" includes an employee's: social security number; home address; home telephone number; personal electronic mail address; internet identification name; internet identification password; parent's

surname prior to marriage; and driver's license number. The law also prohibits the use of social security numbers as an identification number for purposes of any occupational licensing.

For knowing violations of these new provisions to the New York Labor Law, an employer may face a civil penalty of up to \$500. *A violation is presumed to be a "knowing" violation if the employer failed to implement policies and procedures to ensure compliance with the law, including procedures to notify relevant employees about the law.*

In addition to amending the New York Labor Law, the legislature has added provisions to the New York Social Security Number Protection Act (SSNPA) which is contained in the New York General Business Law. As you may recall, we issued a client alert in April 2007 regarding an employer's obligations under the SSNPA that was to take effect on January 1, 2008. The SSNPA places limits on the use and communication of social security numbers and imposes penalties on individuals and companies that fail to safeguard such information. Generally, the law prohibits individuals or companies from: communicating social security numbers to the general public; printing social security numbers on access cards; requiring transmission of

747 Third Avenue
New York, N. Y. 10017
Tel: 212-758-7600
www.ccmlaw.com

social security numbers over the internet unless the connection is secure or the numbers are encrypted; requiring use of social security numbers to access an internet website unless a password or personal identification number also is required; and printing social security numbers on various mail materials. It also requires individuals and companies to ensure that access to social security numbers is limited to individuals with a legitimate business need for the information and to implement safeguards against unauthorized access.¹

Effective January 3, 2009, the SSNPA now contains provisions prohibiting individuals and companies from encoding or embedding a social security number on any card or document, including a bar code, chip, magnetic strip, or other technology. In addition, no person may file any publicly available document that contains the social security number of any other person, unless the other person is a dependent child or has consented to the filing or unless required by law or court ruling.

For violations of the SSNPA, the New York Attorney General may seek an injunction against any violators.

¹ The New York General Business Law defines "social security account number" as the number issued by the federal social security administration and any number derived from such number (e.g., the last four digits).

Additionally, civil penalties may be imposed from up to \$1,000 for a single violation and up to \$100,000 for multiple violations resulting from a single act or incident and, for subsequent violations, up to a \$5,000 penalty for a single violation and up to \$250,000 for multiple violations resulting from a single act or incident. An individual or company will not be deemed to have violated the law, however, if they can demonstrate that the violation was unintentional and resulted from a bona fide error made in spite of procedures reasonably adopted to avoid such error. Note that the New York Labor Law amendments described earlier in this advisory do not contain the same "bona fide error" latitude afforded in the General Business Law's SSNPA.

Employers must be mindful of the requirements imposed upon them in both the SSNPA and the New York Labor Law, and should have appropriate policies, protocols, and communication mechanisms in place to ensure compliance. Should you require any assistance in this regard or have any questions, please contact [Farah Mollo](#) or any attorney at the Firm at (212) 758-7600.

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