



NEW YORK STATE SOCIAL SECURITY NUMBER PROTECTION LAW EFFECTIVE JANUARY 1, 2008

A new law in New York State restricting the use and display of an individual's Social Security number (SSN) will be effective January 1, 2008.

Employers in the State that use employee SSNs, or even a portion of those numbers, for the purposes of record-keeping, timekeeping or as employee identification numbers, may face harsh penalties if they do not take immediate steps to ensure compliance with the law.

The "Social Security Number Protection Law" covers all persons, firms, partnerships, associations and corporations in New York State, excluding governmental entities, who fail to adequately restrict access to their employees' SSNs.

The restrictions on SSN use and display are broad. The law restricts the use and display of an individual's SSN, as well as the use and display of "*any number derived from [a person's SSN].*"

Employers are also required to take steps to limit unauthorized access to SSNs within their organization. While the law allows employers to maintain employee numbers on files for administrative reasons, it calls upon employers to take "reasonable measures" to ensure the confidentiality of those numbers.

WHAT IS PROHIBITED BY THE NEW LAW?

The Social Security Number Protection Law prohibits the following:

- Publishing or communicating an individual's SSN to the general public.
- Displaying an individual's SSN on an employee ID card or tag.
- Requiring internet transmission of an employee's SSN via an unencrypted connection. An employer *may* ask for a SSN on a secure connection accompanied by an additional password or authentication tool.
- Sending an individual's SSN to that person on materials through the mail (*unless required to do so by federal or state law*).



Jaeckle Fleischmann & Mugel, LLP

BUFFALO

12 Fountain Plaza
Buffalo, New York 14202-2292
Phone: 716.856.0600
Fax: 716.856.0432

AMHERST

400 Essjay Road, Suite 320
Amherst, New York 14221-8228
Phone: 716.250.1800
Fax: 716.250.1806

ROCHESTER

190 Linden Oaks
Rochester, New York 14625-2812
Phone: 585.899.2930
Fax: 585.899.2931

PHOENIX

7047 East Greenway Parkway, Suite 250
Scottsdale, Arizona 85254-8113
Phone: 480.659.2213
Fax: 480.659.3419

LABOR & EMPLOYMENT ATTORNEYS

Sean P. Beiter (NY)

sbeiter@jaeckle.com; 716.843.3805

Thomas E. Brydges (NY)

tbrydges@jaeckle.com; 716.843.3812

Elizabeth Fox-Solomon (NY)

efoxsolomon@jaeckle.com; 716.843.3936

Scott P. Horton (NY)

shorton@jaeckle.com; 716.843.3949

John M. Monahan (NY)

jmonahan@jaeckle.com; 716.843.3870

Randall M. Odza (NY)

rodza@jaeckle.com; 716.843.3877

Edward G. Piwowarczyk (NY, IL)

epiwowarczyk@jaeckle.com; 716.843.3834

Matthew C. Van Vesseem (NY)

mvanvessem@jaeckle.com; 716.843.3842

ADMISSIONS INFORMATION

by state, follows respective attorney name

IMPORTANT EXCEPTIONS TO THE LAW'S REQUIREMENTS

There are several exceptions to the requirements of the Social Security Number Protection Law that should be noted by employers.

- The use of encrypted SSNs is permitted under the law's provisions.
- The law also affords an exception for administrative documents, including enrollment, amendment or termination papers regarding employee benefit plans. Administrative documents sent by mail must be in an envelope and SSNs cannot appear on a postcard or enclosure that makes the number visible to someone other than the mail recipient.

SIGNIFICANT CIVIL PENALTIES FOR NON-COMPLIANCE

Any employer who is found to be in violation of one the Social Security Number Protection Law may be subject to significant civil penalties. If the violation involves only one individual's SSN, the maximum penalty is \$1,000. However, if the disclosure of multiple SSNs are involved, the employer may incur a maximum penalty of \$100,000. A second violation within an organization increases the potential penalties to \$5,000 and \$250,000, respectively.

There is a good faith allowance in the law for employers who, in good faith, implement policies and procedures to guarantee compliance with the law. An employer who "shows, by a preponderance of the evidence, that the violation was not intentional and resulted from a bona fide error made notwithstanding the maintenance of procedures reasonably adopted to avoid such error" will incur no civil penalties.

Reviewing and adjusting policies and practices on the use and display of employee SSNs prior to the law's January 1, 2008 effective date for compliance will decrease potential liability in the event an inadvertent violation of the Social Security Number Protection Law occurs. If you have any questions regarding the New York State Social Security Number Protection Law or any other employment-related issues, please contact John Monahan at 716.843.3870 or jmonahan@jaeckle.com.