Employment Alert

January 2006

New Jersey Identity Theft Prevention Act Effective January 1, 2006

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We write to inform you that New Jersey has recently joined the increasing number of states to enact legislation to protect its citizens against identity theft by curbing the unauthorized or fraudulent interception of personal, financial, and other identifying information. Effective January 1, 2006, New Jersey's Identity Theft Prevention Act (the "Act"), applicable to virtually all businesses in New Jersey (subject to certain technical exceptions to specific subsections of the Act beyond the scope of this alert), aims to thwart new and mitigate existing identity theft by restricting a company's use, retention, and destruction of individuals' personal information, and by developing notice requirements and a security freeze mechanism as precautionary or corrective measures.

The Act imposes affirmative obligations on New Jersey businesses to avert the risk of identity theft. Even a minor violation of the Act can subject a business to serious civil liabilities and penalties. Thus, a New Jersey employer is best served by implementing, posting and distributing to its employees written policies and procedures to assure compliance with the Act's specific requirements.

Limits on Use and Display of Social Security Numbers

Recognizing that Social Security numbers are most frequently used as a record-keeping tool, particularly in many computer files, the New Jersey Legislature sought to make the Social Security numbers of New Jersey residents less accessible to prospective identity thieves. In furtherance of this goal, the Act prohibits certain uses and displays of Social Security numbers in both print and electronic media. Employers should make sure their employees are aware of permissible and impermissible uses of Social Security numbers under the Act.

Destruction of Records Containing "Personal Information"

Many companies have internal record destruction policies that do not adequately protect personal information, which risks exposing individuals to identity theft. The risk of interception and misuse of personal information is especially great when records are maintained in an electronic format. The Act's definition of "personal information" is quite broad, and includes an individual's name combined with his/her Social Security number or driver's license

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number, or other personal or financial information that relates to that individual.

The Act requires a company to use special efforts to destroy and erase personal information contained in all paper or electronic records when the records are no longer to be retained by the company. New Jersey employers should implement written policies and procedures governing access, retention, and destruction of records containing personal information to be sure its employees comply with the Act's mandates.

Notification Requirements in Event of Security Breach

Vast quantities of sensitive, personal information, often kept in unprotected electronic databases, are vulnerable to criminal interception and misuse, as has been the case in certain recently publicized electronic data security breaches. The Act requires companies to take reasonable measures to protect the integrity of and prevent unauthorized access to personal information and requires businesses to notify consumers of any breach in the security of its database.

Specifically, after notifying certain law enforcement entities, a company must give prompt, written notice to customers whose personal information in an electronic format is reasonably believed to have been accessed by an unauthorized person, unless the company can establish that misuse of such personal information due to such security breach is not reasonably possible. A company must document and retain any such determination for five years.

"Security Freeze" System

Finally, to prevent identity theft from occurring in cases where a third party has gained unauthorized access to personal information, the Act allows an individual who has been notified that his personal information has been compromised to place a security freeze on his or her credit report without charge. Such a "freeze" prohibits the agency from releasing the consumer's credit report or from changing any of the consumer's vital statistics, absent certain written notices.

Compliance with the Identity Theft Prevention Act

The Act's limits on the use and display of Social Security numbers, record destruction mandates, and notification requirements impose serious obligations on virtually every type of business in New Jersey. Non-compliance with the Act's directives can subject a business to severe consequences, including civil suit by any injured person and even civil penalties.

Employers are best served by updating their internal policies and/or employee handbooks as soon as possible to assure compliance with the Act. It may also be prudent for employers to offer a training session to educate employees with access to such sensitive information about the proper and authorized uses of and destruction policies for personal information, as determined by the individual employer, and as set forth in the Act. Moreover, employers storing personal information in an electronic format should examine their current computer system to assure that personal

information is sufficiently protected from access by unauthorized individuals. Finally, employers should develop an implementation strategy for distribution of required notices in the event of a security breach to ensure compliance with New Jersey's Identity Theft Prevention Act.

Should you have any further questions with regard to identity theft prevention or any other employment-related matters, please contact Martha L. Lester, Esq., Chair of the Employment Law Practice Group, Julie Levinson Werner, Esq., or Amy Komoroski Wiwi, Esq., members of the Employment Law Practice Group, at (973) 597-2500.