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The Minnesota Legislature recently enacted two new laws that impact the record practices of private employers: one that protects disclosure of social security numbers and a second that compels employers to provide written notification to employees upon hire of their right to review their personnel records.

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## Midwest Edition

*A Littler Mendelson Midwest-specific Newsletter*

### Two New Minnesota Laws Impose Additional Employer Requirements Regarding Employee Social Security Numbers and Review of Personnel Records

*By Stephanie D. Sarantopoulos and Jodie F. Friedman*

Minnesota employers must quickly adjust their business and personnel practices to abide by two new statutes. The first, effective January 1, 2008, compels employers to provide written notice to applicants upon hire of their right to review their personnel record under Minnesota's Personnel Records Statute. The second, effective July 1, 2008, requires employers to restrict access to and the use of social security numbers.

#### Personnel Records

The Minnesota Personnel Records Statute provides a detailed procedure for maintaining and providing employees access to their personnel records. As a result of the 2007 legislative session, employers are now also required to provide written notice to a job applicant upon hire of the rights and remedies provided in the Minnesota Personnel Records Statute.

As of January 1, 2008, employers must provide written notice to applicants upon hire that:

- they have the right to review their personnel record upon written request, made in good faith, once every six months;
- the employer must make the record, or an accurate copy, available for review during normal hours at the employee's place of employment or at another reasonably nearby location, but need not make the record available during the employee's actual working hours;
- the employer may require that the review be made in its presence or the presence of its designee;

- after the review and upon the employee's written request, the employer is required to provide a copy, at no charge, of the record to the employee;
- if the employee disputes specific information contained in the record, and agreement is not reached to remove or revise the disputed information, the employee may submit a written statement, not exceeding five pages, identifying the disputed information and explaining the employee's position, which then must be included as part of the personnel record;
- the employer may not retaliate against employees for asserting their rights under the Personnel Records Statute;
- if the employer violates the Personnel Records Statute, the employee may bring a civil action to compel compliance and for actual damages, plus costs;
- if the employer retaliates against an employee, the individual may bring a civil action for actual damages, back pay, reinstatement or other make-whole, equitable relief, plus reasonable attorney's fees.

When complying with the legal obligation to allow an individual to review his or her own personnel record, employers should be mindful that the law specifically defines a personnel record to include and exclude certain specific records. Also, employers must provide access to the personnel record no later than 7 working days after receipt of the request if the personnel record is located in Minnesota, or no later than 14 working days after receipt of the request if the personnel

record is located outside of Minnesota.

## Social Security Number Shield Law

Minnesota's new Social Security Number Shield Law ("Shield Law") requires Minnesota businesses to take affirmative steps to protect against disclosure of an individual's social security number. Many employers have used employee social security numbers as identification numbers for recordkeeping and retrieval purposes. Increasing reports of identity theft in the workplace have prompted the legislature to respond to this and other uses of social security numbers in the workplace.

Minnesota joins fifteen other states that have already enacted similar legislation with the goal of protecting employee social security numbers. To comply with Minnesota's new Shield Law, employers are required to restrict access to social security numbers to ensure that only employees who require the numbers to perform their job duties have access. The new Shield Law does not apply, however, to governmental entities.

In addition, no private employer is permitted to:

- intentionally communicate or otherwise make available to the general public an individual's social security number;
- print an individual's social security number on any card required to access products or services provided by the employer;
- require an individual to transmit his or her social security number over the internet unless the connection is secure or the social security number is encrypted, except as provided by federal law;
- require an individual to use his or her social security number to access an internet website, unless a password or unique personal identification number or other authentication device is also required to access the internet website;
- print an individual's social security number on any materials that are mailed to the individual, unless state or federal law requires the social security number to be on the document to be mailed;

- assign or use a number as the primary account identifier that is identical to or incorporates an individual's complete social security number; or
- sell the social security numbers obtained from individuals in the course of business.

Notwithstanding these prohibitions, social security numbers may still be: (i) included in applications and forms sent by mail, including documents sent as part of an employment application or benefit enrollment process; (ii) used to establish, amend or terminate an account, contract or policy; or (iii) used to confirm the accuracy of the social security number, as long as the information is not printed on the outside of the mailing. Similarly, employers may continue to use portions (but not all) of an individual's social security number as employee identification numbers.

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