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Weekly Employment Brief

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New California Law Restricts Use Of Social Security Numbers

Effective July 1, 2002, California employers will be required to restrict the use of applicant and employee social security numbers (SSNs). The California legislature recently enacted California Civil Code § 1798.85 to help protect individuals from an increasing rate of identity theft. This new law prohibits employers from using SSNs under a wide variety of circumstances including:

1. Intentionally communicating or otherwise making available a SSN to the general public (i.e., "publicly post" or "publicly display");
2. Displaying SSNs on identification cards;
3. Requiring SSNs to access an Internet site without a password, unique personal identification number or other authentication device;
4. Transmitting SSNs over the Internet, unless the connection is secure or the SSN is encrypted; and
5. Printing SSNs on any material sent by mail (such as bills or benefits packages), unless state or federal law requires the printing of the number on those items.

An exception to the above prohibited uses allows employers to continue to use an employee's SSN when the following criteria are met: (a) use of the SSN has been continuous (if the use is stopped for any reason, the prohibitions apply); and (b) the individual is given an annual disclosure informing the employee of his or her right to stop the use of the SSN. Upon receipt of such a written request by an employee to discontinue use of his or her SSN, the employer must cease using the SSN within 30 days, and no services may be denied on the basis of a request to cease using the individual's SSN. In light of these changes to California law, employers should reevaluate their policies regarding the use of SSNs and be aware of the prohibitions and disclosure requirements required by the new law.

Unanimous Supreme Court Decision Makes It Easier For Plaintiffs To Maintain Complaints Of Discrimination

In a rare unanimous decision, the US Supreme Court recently answered the basic question of what facts a plaintiff must plead to withstand a motion to dismiss for failure to state a claim of discrimination. In *Swierkiewicz v. Sorema*, the Supreme Court found that a plaintiff seeking to file an age bias complaint does not have to allege specific facts of discrimination in order to support a claim under the federal Age Discrimination in Employment Act (ADEA). Rather, the Court found that a plaintiff need only make a "short, plain statement of the claim showing the Plaintiff's entitlement to relief." The Supreme Court's decision is of great significance to employers hoping for quick dismissals of frivolous suits brought by current or former employees. The decision confirms what companies in California have known for years - that employment discrimination suits are enormously difficult to dismiss at an early stage. Rather, courts will only dismiss discrimination suits after aggressive discovery reveals their frivolous nature.

Employer Not Liable For Death Of Independent Contractor's Employee

In an important ruling for companies that use independent contractors, the California Supreme Court recently held that a company was not liable for the death of an independent contractor's employee who was killed at a company worksite. In *Hooker v. Department of Transportation,* an independent contractor's employee was killed while working on a highway overpass for the California Department of Transportation (CalTrans). The employee's widow sued CalTrans alleging that the agency acted negligently because they established the safety rules at the worksite. The California Supreme Court disagreed, and held that a party will only be liable for the death or injury of an independent contractor's employee when the party "affirmatively contributed to the injury of the contractor's employee." Merely requiring the contractor's employees to observe company safety rules is not enough to establish such liability.

$2.66 Million Verdict Upheld Against Oracle For Whistle-Blower Retaliation

A $2.66 million jury verdict against Oracle Corporation in favor of a former female vice president was upheld by a California court of appeal in *Baratta v. Oracle Corp.* Baratta alleged that she was fired in retaliation for complaining about pregnancy discrimination and blowing the whistle about Oracle's theft of trade secrets from software company SAP. The court concluded that the closeness of the discharge to the employee's complaints -- i.e., she was terminated the same day she complained about the trade secret issue -- supported the jury's verdict.

Bush Administration Supports Federal Legislation To Prohibit Genetic Bias

The EEOC recently announced that the Bush administration supports federal legislation that would ban genetic discrimination. If passed, the law would prohibit both employers and health insurers from discriminating against individuals because of their genetic makeup. California's Fair Employment and Housing Act (FEHA) already prohibits discrimination against applicants and employees on the basis of genetic characteristics. This national "push" further underscores the disfavor of genetic screening in the workplace.