

New N.Y. Law Prohibits Hiring of Inmates for Positions with Access to Social Security Numbers

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On August 14, 2012, Governor Andrew Cuomo signed a law to prohibit any person, firm, partnership, association, or corporation from hiring inmates of correctional facilities for any position that involves accessing, collecting or processing the social security number of other individuals.

The new law amends New York's General Business Law, which already requires any person, firm, partnership, association, or corporation having access to social security numbers to take reasonable measures to ensure that no officer or employee has access other than for a legitimate or necessary purpose related to the conduct of such business or trade. New York's General Business Law also requires the implementation of safeguards necessary or appropriate to preclude unauthorized access to the social security number and protect the confidentiality of such number.

To enforce the new law, New York's attorney general may seek an injunction in court. In addition to granting injunctive relief, a court also may assess a civil penalty of no more than one thousand dollars for a single violation and no more than one hundred thousand dollars for multiple violations resulting from a single act or incident. Furthermore, for a second violation and any violation committed thereafter, the court may impose a penalty of no more than five thousand dollars for a single violation and no more than two hundred fifty thousand dollars for multiple violations resulting from a single act or incident.

Under the new law, no violation has been committed if there is a showing, 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.

New York's new law, which *creates* a barrier to hire, diverges from the headwind of laws and proposed laws at the federal and state levels seeking to *remove* perceived barriers to hire. Indeed, in New York alone, bills are pending that would ban or significantly limit employer background checks regarding an applicant's criminal background, credit history, unemployment status, and use of social media – bills seemingly at odds with this new law.

The new law takes effect on November 12, 2012. If you have any questions or concerns regarding the new N.Y. law, please contact your Proskauer lawyer or any co-chair of the Employment Law Counseling Practice Group. Please also see our past client alerts regarding the hiring process:

[EEOC Issues New Guidance on Criminal Background Checks,](#)

[Law Prohibiting Discrimination Based on Unemployment Status Signed by DC Mayor: Employers Beware – Similar Laws Likely to Follow,](#) and

[Illinois Second State to Prohibit Employers from Requiring Applicants and Employees to Divulge Social Media Passwords.](#)

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