

LEGAL ALERT

TO: All School District and Municipal Clients

FROM: Keane & Beane, P.C.

RE: Use of Social Security Numbers

DATE: August 5, 2010

From time to time, Keane & Beane, P.C., will issue a legal alert to our clients to keep them informed of important changes or updates in the law. On or about July 9, 2010, the New York State Chief Information Officer/New York State Office for Technology distributed the attached New York State Information Technology Policy, No. NYS-P10-004, entitled Guidance for the use of Social Security Numbers by State Government Entities (“CIO/OFT Policy”). This policy describes the requirements applicable to entities of the State government and its political subdivisions (including school districts) pursuant to laws that were recently enacted concerning the use of Social Security Numbers – Section 96-a of the New York State Public Officers Law (which took effect on January 1, 2010) and Section 203-d of the New York State Labor Law (which took effect on January 3, 2009).

The attached CIO/OFT Policy also provides guidance as to how to ensure compliance with these new laws and reinforces the need for entities of the State government and its political subdivisions to develop their own policies and to train their employees with regard to compliance with the laws regulating the use of social security numbers. Under Section 203-d of the New York State Labor Law (“Section 203-d”), a civil penalty of up to \$500 may be imposed on any employer for any knowing violation of the section. Significantly, if an employer has not put in place any policies or procedures to safeguard against violating Section 203-d, any violations of Section 203-d are by law presumptively knowing violations for which civil penalties may be imposed. If you do not already have a policy concerning the restrictions of Section 203-d, a sample policy is enclosed for your convenience. In the sample policy, enumerated provisions (5) through (10) are not required to address Section 203-d or the civil penalties that may be imposed thereunder, but we recommend their inclusion as they address the requirements of Section 96-a.

Please do not hesitate to contact our office should you require assistance in adapting the sample policy to your particular needs.

As the attached CIO/OFT Policy makes clear, unless otherwise required by law, Section 203-d prohibits an employer from: (1) publicly posting or displaying an employee's social security number; (2) visibly printing a social security number on any identification badge or card, including any time card, (3) placing a social security number in files with unrestricted access and (4) communicating an employee's personal identifying information to the general public, which is defined as including: social security number, home address or telephone number, personal electronic mail address, internet identification name or password, parent's surname prior to marriage or drivers' license number. N.Y. Labor Law § 203-d(1) (McKinney's 2009).

Similarly, as is evident from the attached CIO/OFT Policy, Section 96-a of the New York State Public Officers Law ("Section 96-a") contains many of the same prohibitions but is more expansive. For instance, it addresses mailing documents containing social security numbers. Under Section 96-a, New York State and its political subdivisions may not:

- (1) intentionally communicate or otherwise make available to the general public an individual's social security number;

- (2) print an individual's social security number on any card or tag required for the individual to access products, services or benefits provided by the State and its political subdivisions;
- (3) 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;
- (4) require an individual to use his or her social security number to access a website, unless a password or unique personal identification number or other authentication device is also required to access the internet website;
- (5) include an individual's social security number, except the last four digits thereof, on any materials that are mailed to the individual, or in any electronic mail that is copied to third parties, unless state or federal law require the social security number to be on the document mailed; and
- (6) encode or embed a social security number in or on a card or document in place of removing the social security number from it as required by this law.

N.Y. Pub. Off. Law § 96-a(1) (McKinney's Supp. 2010). Notwithstanding these restrictions, this law explicitly permits an individual's social security number to be included on applications and

forms sent by mail as part of an application or enrollment process so long as the social security number cannot be viewed without opening the envelope. *See* N.Y. Pub. Off. Law § 96-a(1)(e). Notably, Section 96-a also explicitly states that it “does not prevent the collection, use or release of a social security account number as required by state or federal law, or the use of a social security account number for internal verification, fraud investigation or administrative purposes.” N.Y. Pub. Off. Law § 96-a(3).

Should you have any questions with regard to the attached CIO/OFT Policy, the attached sample policy or the requirements of either Section 203-d or Section 96-a, please call Stephanie L. Burns of this Office.

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