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ARE YOUR PERSONNEL POLICIES UP TO SNUFF?

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If it has been a while since your last employment policy review, now would be a good time to dust off your employee handbook and check for compliance with two recent Federal Law updates pertaining to the [Family Medical Leave Act \(FMLA\)](#) and the [Social Security Number Privacy Act \(SSNPA\)](#), and with recent cases addressing liability for sexual harassment in the workplace.

The United States District Court for the Western District of Michigan recently held that an employer's practices under FMLA are insufficient to provide notice to employees of the method selected for calculating the 12 weeks of FMLA leave entitlement.

In *Austin v. Fuel Systems, LLC*, the court recognized that an employer is permitted to choose the 12-month period in which the 12 weeks of leave entitlement occurs (i.e., calendar year, fixed 12-month "leave year," or a rolling 12-month period measured forward or backward from the date leave is taken).

However, the regulations state that, if an employer fails to *select* one of the options, the method that provides the most beneficial outcome for the employee will be used. The issue was whether, in addition to *selecting* the 12-month period, the employer must *notify* its employees of that selection. Neither FMLA nor its regulations expressly address this issue.

The court, relying on a decision of the U.S. 9th Circuit Court of Appeals, held that "employers are required to notify employees of the method for FMLA leave calculation, and that when employers fail to do so, leave is to be calculated in the manner most beneficial to the employee." Therefore, it is important for an employer to state the method selected in its FMLA policy or notices provided to employees.

On March 1, 2005, the Social Security Number Privacy Act (SSNPA) became effective, which will require employers to adopt a privacy policy not later than Jan. 1, 2006. At a minimum, the privacy policy must do all of the following:

- Insure to the extent practicable the confidentiality of social security numbers

- Prohibit unlawful disclosure of social security numbers
- Limit access to information or documents that contain social security numbers
- Describe how to properly dispose of documents containing social security numbers
- Establish penalties for violation of the privacy policy

Employers will be required to publish the privacy policy in an employee handbook or procedures manual or similar documents, which may be published electronically. Also, the SSNPA currently prohibits employers from intentionally doing any of the following:

- Publicly displaying more than four sequential digits of a social security number
- Requiring an employee to transmit more than four sequential digits of his or her social security number over the Internet or a computer system or network unless the connection is secure or the transmission is encrypted
- Printing more than four sequential digits on any identification badge, cards, permit or license
- Requiring an employee to use or transmit more than four sequential digits to gain access to an Internet website or computer system or network generally unless it is secure or encrypted
- Including more than four sequential digits in any document or information that is mailed if the numbers would be visible without manipulation from the outside of the envelope
- Beginning Jan. 1, 2006, including more than four sequential digits of the social security number in any document or information that is mailed

Finally, while there are specific exceptions to the prohibitions above, the SSNPA makes it a misdemeanor punishable by imprisonment of not more than 93 days or a fine of not more than \$1,000 (or both) for a person who violates the SSNPA and provides for a civil action for actual damages or \$1,000 (whichever is greater) and an award of attorneys' fees.

If you need further information concerning the cases above or require assistance in updating policies, please contact your Plunkett & Cooney attorney directly, or in the alternative, Plunkett & Cooney's Labor & Employment Law Practice Group Leader Theresa Smith Lloyd at (248) 901-4005.

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