



New York State Department of Labor
David A. Paterson, *Governor*
M. Patricia Smith, *Commissioner*

December 24, 2009



Re: Request for Opinion
Labor Law §203-d
RO-09-0124

Dear [REDACTED]:

This letter is written in response to your email of September 8, 2009 in which you request an opinion regarding New York Labor Law Section 203-d. Your email asks whether, under that law, a private-sector employer may use the last four digits of an employee's social security number as an identifier. You also ask whether there is a private right of action under Section 203-d and what constitutes a "single" violation, presumably of that Section.

Section 203-d of the Labor Law, which is entitled "Employee personal identifying information," provides, in full, as follows:

1. An employer shall not unless otherwise required by law:
 - (a) Publicly post or display an employee's social security number;
 - (b) Visibly print a social security number on any identification badge or card, including any time card;
 - (c) Place a social security number in files with unrestricted access; or
 - (d) Communicate an employee's personal identifying information to the general public. For purposes of this section, "personal identifying information" shall include

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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.

2. A social security number shall not be used as an identification number for purposes of any occupational licensing.

3. The commissioner may impose a civil penalty of up to five hundred dollars on any employer for any knowing violation of this section. It shall be presumptive evidence that a violation of this section was knowing if the employer has not put in place any policies or procedures to safeguard against such violation, including procedures to notify relevant employees of these provisions.

With regard to your first question, whether an employer may use the last four digits of an employee's social security number as an identifier, it is important to note that Section 203-d of the Labor Law neither defines nor limits the meaning of that term to mean only an individual's full, unabbreviated social security number. However, given the fact that employers frequently utilize the last four digits of an employee's social security number as a unique identifier and the Legislature did not expressly prohibit such conduct, the Department does not regard such a practice to be in violation of Section 203-d of the Labor Law. Notwithstanding that opinion, the Department encourages employers to voluntarily cease using the last four digits of the employee's social security number so as to help protect their employees from identity theft.

With regard to your question relating to a private right of action under Section 203-d, while that Section provides the Commissioner the authority to impose civil penalties for knowing violations of that Section, nothing therein either authorizes or prohibits private actions for violations of that Statute or for damages resulting from such a violation. Whether a violation of Section 203-d gives rise to a private cause of action may only be determined by the court or courts in which such an action is brought.

Finally, your email asks what constitutes a "single" violation. Since you do not specify the context in which the term "single" violation is being used, this response assumes that you are asking what the Department considers to be separate violations of Section 203-d for the purpose of the imposition of a civil penalty under Section 203-d(3). It is the enforcement policy of this Department to issue citations to employers for each employee and for each payroll period as prescribed by Labor Law §191. For example, an employer with five employees that knowingly violates the provisions of Section 203-d for three pay periods may be cited for fifteen violations of that Section. However, in line with the requirements in Section 203-d, the Department limits the number of pay periods

that the employer may be cited to those in which the employer had knowingly violated Section 203-d.

This opinion is based on the information provided in your email of September 8, 2009. A different opinion might result if the circumstances stated therein change, if the facts provided were not accurate, or if any other relevant fact was not provided. If you have any further questions, please do not hesitate to contact me.

Very truly yours,

Maria L. Colavito, Counsel



By:

Jeffrey G. Shapiro
Associate Attorney

JGS:mp

cc: Carmine Ruberto