



worklaw<sup>®</sup> network

# PILCHAK COHEN & TICE, P.C.

*Attorneys Representing Management in Labor and Employment Law*

# WORKPLACE CHRONICLE

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## Recent Victories for Our Clients

- PCT successfully defended and obtained dismissal of a prominent Metro-Detroit Mortgage company's action seeking an injunction to enforce non-compete agreements against PCT's corporate client and three employees.
- PCT recently settled two age discrimination cases for less than "nuisance value." The plaintiffs bet their depositions would eloquently describe their case. But, after the depositions their employer withdrew its prior settlement offer. The cases ultimately settled for less than half the amount initially offered. Plaintiffs bet wrong.



## Social Insecurity

In March, the Michigan Legislature quietly passed the Social Security Number Privacy Act, which can be found at MCLA 445.81 et seq. The new law applies to all individuals and businesses that use social security numbers and restricts what employers can do with the social security numbers of their employees and others. Employers may not intentionally do any of the following with respect to employees or other individuals:



1. Publicly display all or more than four sequential digits of an employee's social security number. **Public display includes making the information visible on a computer screen;**
2. Use all or more than 4 sequential digits of the social security number as their primary account number **unless it is used in the ordinary course of business for administrative purposes.** In the context of employment, this means that an employer may continue to use social security numbers to verify an individual's identity; investigate an individual's claim, credit, criminal or driving history; detect, prevent, or deter a crime; and administer employee benefits. However, employers that have been using social security numbers as the primary account numbers for its employees since before March 1, 2005, have until January 1, 2006 to make the change over

(subject to the above exceptions);

3. Visibly print all or more than 4 sequential digits of the social security number on any identification badge or card. If an employer establishes a target date upon which it will cease such use, then the prohibition does not apply until that target date or January 1, 2006, whichever is earlier;
4. Require an individual to use or transmit all or more than 4 sequential digits of the social security number over the internet or a computer system or network unless the connection is secure or the transmission is encrypted;
5. Require an individual to use or transmit all or more than 4 sequential digits of the social security number to gain access to the internet website or a computer system or network unless the connection is secure, the transmission is encrypted or a password or other identification is also required to gain access;
6. Include all or more than 4 sequential digits of their social security number in or on any document or information mailed or otherwise sent to an individual if it is visible from outside the envelope or packaging; and
7. Include all or more than 4 sequential digits of their social security number in any document or information mailed to a person after January 1, 2006 unless authorized by state or

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- Benefits and Detriments of Arbitration of Statutory Claims vs. Traditional Litigation
- Consent and Authorization to Release Employment Information
- Employment Application
- Fair Credit Reporting Act Forms
- Garnishee Disclosure Form
- HIPAA Authorization for Disclosure / Use of Personal Health Information
- I-9 Forms
- Policy—Wage Deductions
- Relief of Charge
- Sample CCW Memo
- Sample Certification for Users of Consumer Report
- Severance Agreement and Release of Claims
- Severance Agreement and Release of Claims (In Compliance With Older Worker Benefit Protection Act)
- WH 380/381 Forms (under FMLA guidelines)
- Workplace Violence—Risk Factor Checklist

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federal law, rule, regulation or court order, the document is sent as part of an application or enrollment initiated by the individual, or to establish, confirm, service, amend or terminate an account, contract, policy or benefit; or is mailed by a public body under certain limited circumstances.

The “ordinary course of business” exception appears to allow employers to continue with most traditional uses of social security numbers. For example, employers can continue to use social security numbers in connection with the application process, the I-9 process, workplace investigations and the administration of employee benefits and payroll. The most significant change will be how employers go about protecting social security numbers from public display. Since the “public display” definition includes “making the information visible on a computer screen,” employers will have to limit access to social security numbers on the computer screens of their employees. In fact, the safest practice will be to require that computer access to social security numbers only take place **behind closed doors** where the information is not visible to those passing by.

The Act also requires employers, which obtain 1 or more social security numbers in the ordinary course of business to adopt a **privacy policy** by January 1, 2006. The privacy policy **must** be published in an employee handbook or procedures manual and must ensure to the extent practicable the confidentiality of the social security numbers, prohibit unlawful disclosures, limit access to social security numbers, describe how to properly dispose of documents containing social security numbers and establish penalties for violations of the policy.

A violation of the Act is a misdemeanor, and the Act provides for a private civil action. The remedies can include the recovery of actual damages or \$1000, whichever is greater, and in cases of knowing violations, reasonable attorneys fees are recoverable. Employers should (1) take inventory of their uses of social security numbers and compare them to the above prohibited practices (2) adopt safeguards to eliminate public display of social security information and (3) watch for PCT’s standardized privacy policy, which will be published on our website in the forms section.



## Highlights from Worklaw Network Spring Meeting

### Union Organizing Update

WLN’s spring meeting featured an update on union organizing trends. While union membership continues to decline, the unions winning the most organizing drives lately are: SEIU (service employees, such as janitors), Unite-Here (textile workers), state nursing associations, Laborers (building trades) and the Machinists union. Indeed, the SEIU organized 41,000 home health care workers in Michigan on April 21. All unions today seek to expand beyond

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their traditional membership. For example, the Machinists have recently organized a dental operation and a muffler shop. So, even if you are not in the “target market” of the listed unions, read on.

Unions look to women, minorities and immigrants as the best pro-union prospects. They avoid elections by getting employers into card check agreements and by coercing neutrality agreements. Those familiar with the process know that both of these practices squelch debate on the downside of union membership, and often force a union on workers who thought signing a card merely authorized a vote. (Employers should consult with counsel as soon as any organizing activity occurs, to avoid these traps.)

Unions have also been engaging in longer, low-intensity campaigns that build relationships with the employees. Instead of bursting on the scene, collecting cards and demanding an election, organizers might consult with the workforce for a year or more and advise “wronged” employees on how to obtain redress. Experience shows that employers need to respond to signs of these low-intensity campaigns.

Some of the unions have started suing employers as part of the organizing effort. PCT has first-hand experience with this tactic. We are currently defending a janitorial industry employer who took over an assignment from an organized predecessor at Wayne County Metro Airport in tort litigation initiated by the SEIU.

To avoid a successful organizing drive in the current climate:

- Do pre-emptive auditing of wage-hour practices and other compliance requirements, so unions cannot find fault;
- Maintain direct management contact with employees, especially women, minorities and immigrants;
- Consider employee sensing through HR representatives and employee meetings to identify employee issues before a union can exploit them;
- Tout employee benefit programs to your best advantage;
- Empower supervisors through training and coaching in union avoidance methods.

Of course the age-old ways to avoid unionization remain important: deliver on promises, treat employees with dignity and respect, be good listeners, and be good problem solvers.

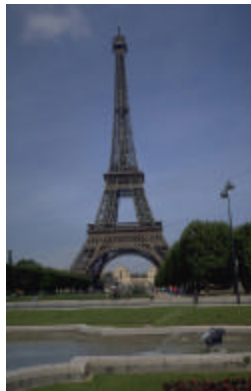
## Highlights from Worklaw Network Spring Meeting Continued...

### Employment Law in Europe

If Michigan employers think they have daunting obligations, they haven’t conducted business in Europe. Worklaw Network, is becoming the “international” network of management labor and employment law firms, having added a Toronto affiliate and considering firms from Alberta and Cologne, Germany. Our German colleague gave a perspective on employment law on the continent.

The European Union (EU) has added another layer of obligations to national laws, collective bargaining agreements (“cba’s”) and mandatory employment contracts. While EU directives do not have the force of law, member countries must implement them, according to their own interpretations, subject to review by the European Court of Justice.

One EU directive sets the maximum work hours at 48 per week, 13 hours per day. Germany’s national law caps hours at 8 or 10 hours per day, while cba’s typically limit work to 35-40 hours per week. Italy caps the workweek at 40. French employees cannot be forced to work more than 35 hours per week, and managers can only work 217 days per year. (Assuming 10 recognized holidays, this equals 7 weeks of vacation per year.)



European maternity leave is more generous than our FMLA: EU Directive: 14 weeks; Germany: 16 weeks paid/ 36 months unpaid; France: 16 weeks paid/ 12 months unpaid; UK: 26 weeks, with 13 additional unpaid weeks; Italy: 5 months at 80% of pay, with another six months at 30% pay anytime before the child is 3 years old.

An EU directive prohibits discrimination against those who want only part-time work and requires pro-rata pay and benefits. In Germany, a full-time employee may request to work only part-time, and the employer may only refuse for “urgent business reasons.”

Employment at will is non-existent in Europe. Termination must be for valid reasons (“cause,” in the U.S.) For a performance discharge, an employee must be 33% worse than average for one year. In France, the employer must tell the employee every

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reason forming the basis for the termination or the reason is not valid. However, litigation claims do not generally result in huge verdicts, because reinstatement is the favored remedy.

But, most employers find the presence of the employee intolerable, and trade severance payments for the reinstatement obligation at the rate of one month of pay for every year of service. Germany takes an interesting approach to economic layoffs. While termination without severance may occur, the company is obligated to terminate the employee with the best prospect of re-employment. Accordingly, if the company's best performer in the job category facing cut-backs is young, with no spouse, family, or disability, he or she is mandated to be the one terminated. ■

## **FYI: New USERRA Poster**

In March 2005, the Department of Labor added yet another item that employers must add to their list of postings in the workplace. Now, a notice must be prominently posted informing employees of their rights under the Uniformed Services Employment and Reemployment Rights Act (USERRA).

USERRA protects job right for those that voluntarily or involuntarily undertake military service. (For a summary of USERRA and a list of other posting requirements, see our newsletter issues from October 2004 and November 2002, respectively.) The new poster is now available at [www.dol.gov/vets/programs/userra/poster.pdf](http://www.dol.gov/vets/programs/userra/poster.pdf). Employers may also obtain further information about USERRA on the Department of Labor website [www.dol.gov/vets/programs/userra](http://www.dol.gov/vets/programs/userra). ■

You can find back issues of the *Workplace Chronicle* on the Web at "[www.MI-EmploymentLaw.com](http://www.MI-EmploymentLaw.com)"

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