

NEBRASKA LIMITS EMPLOYERS' USE OF EMPLOYEE SOCIAL SECURITY NUMBERS

The Nebraska Unicameral recently passed legislation, Legislative Bill 674 ("LB 674"), which will restrict how an employer may use employees' social security numbers ("SSNs"). LB 674 prohibits an employer from publicly posting, displaying, communicating, or otherwise making available more than the last four digits of employees' SSNs. An employer also may not require: employees to transmit more than the last four digits of their SSN over the Internet, unless the connection is secure or the information is encrypted; employees to use more than the last four digits of their SSN to access an Internet web site, unless a password, unique personal identification number, or other authentication device is also required for access; or employees to use more than the last four digits of their SSN as an employee number for any type of employment-related activity. In addition to the broad prohibitions, LB 674 explicitly permits various uses of employees' entire SSNs, such as in compliance with state or federal laws, rules or regulations, and in commercial transactions between the employer and employee for the purchase of goods or services. Using employees' whole SSNs for internal administrative purposes, including providing the full SSN to third parties for administration of benefits or employment screening is also permissible. However, the use of employees' SSNs in the following manners will not be allowed based on internal administrative purposes: as an identification number for occupational licensing; as an identification number for drug-testing purposes, except when required by state and federal law; as an identification number for company meetings; in files with unrestricted access; in files accessible by a temporary employee, unless the temporary employee is bonded or insured; or for the posting of any type of company information. LB 674 becomes effective September 1, 2008, so employers should be anticipating the impact of these new restrictions on their use of employees' SSNs and take action accordingly. After September 1, 2008, any employer in violation of these restrictions will be guilty of a Class V misdemeanor and such conviction will be admissible evidence of employer negligence.

STATE LEGISLATIVE ACTION EXPANDING PROTECTED CLASSES FOR EMPLOYMENT DISCRIMINATION TO INCLUDE SEXUAL ORIENTATION AND GENDER IDENTITY

Iowa, Colorado, and New Jersey recently enacted legislation which impacts employment discrimination as applied to sexual orientation, gender identity or expression, and religion. This letter briefly summarizes the changes to the employment discrimination acts in Iowa, Colorado, and New Jersey.

[Changes to Iowa Employment Discrimination Law](#)

The Iowa General Assembly recently passed Senate File 427 which expands Iowa's Civil Rights Act to include gender identity and sexual orientation. The bill, which became effective on July 1, 2007, defines gender identity as "a gender-related identity of a person, regardless of the person's assigned sex at birth" and sexual orientation as "actual or perceived heterosexuality, homosexuality, or bisexuality." These new classifications apply to all individuals and organizations previously covered by the Iowa Civil Rights Act including employers, employment agencies, labor organizations, public accommodation, housing,

educational institutions and creditors. Regarding employers, the bill makes it a discriminatory practice for any person to refuse to hire, to terminate, or to otherwise discriminate in employment against any applicant or employee on the basis of sexual orientation or gender identity.

The bill expands an exemption for religious institutions or their education facilities, associations, corporations, or societies with respect to qualification for employment based on religion, sexual orientation, or gender identity, when such qualifications are related to a bona fide religious purpose. The Iowa Civil Rights Act previously provided an exemption for these religious organizations in regards to qualifications for employment based on religion.

Changes to Colorado Employment Discrimination Law

On May 25, 2007 Colorado Governor Bill Ritter signed Senate Bill 07-025 which amended Colorado's statutes prohibiting discriminatory employment practices to cover sexual orientation and religion. The legislation, which becomes effective August 8, 2007, does not define religion but defines sexual orientation as "a person's orientation toward heterosexuality, homosexuality, bisexuality, or transgender status or an employer's perception thereof."

Under the prior version of the statute, employers could not discriminate on the basis of race, creed, color, sex, age, national origin, ancestry, and some degree of disability. The expanded provisions make it a discriminatory or unfair employment practice for an employer to refuse to hire, to terminate, to promote or demote, to harass during the course of employment, or to discriminate in matters of compensation against any person otherwise qualified on the basis of sexual orientation or religion. Similar provisions against discrimination on the basis of sexual orientation and religion also apply to employment agencies, labor organizations, joint apprenticeship committees, and other training-related programs.

The legislation also addresses application to religious corporations and dress code issues. The bill exempts religious corporations and associations that are not supported in whole or in part by money raised through taxation or public borrowing from the nondiscrimination legislation. While the legislation does not address how employers may treat dress code issues, it states that the new provisions do not prohibit employers from requiring compliance with reasonable dress codes as long as the dress codes are applied consistently.

Changes to New Jersey Employment Discrimination Law

On June 17, 2007, changes to New Jersey's "Law Against Discrimination" became effective. Changes to the "Law Against Discrimination" make it an unlawful employment practice to discriminate on the basis of gender identity or expression, which is defined as "having or being perceived as having a gender related identity or expression whether or not stereotypically associated with a person's assigned sex at birth." The changes have far-reaching implications as the bill bans discrimination on the basis of gender identity or expression by employers, labor organizations, government contractors, public accommodation, property owners, and creditors, among others. While the bill states that employers may require adherence to workplace dress codes, employers must allow employees to dress in a manner "consistent with the employee's gender identity or expression."

An existing provision in New Jersey's "Law Against Discrimination" that permits "a religious association or organization to utilize religious affiliation as a uniform qualification in the employment of clergy, religious teachers or other employees engaged in the religious activities of the association or organization, or in following the tenets of its religion in establishing and utilizing criteria for employment of an employee" would be applicable to gender identity or expression.

Iowa, Colorado, and New Jersey are not the only states to expand classes protected from employment discrimination. States which currently have banned employment discrimination on the basis of sexual orientation include California, Connecticut, Hawaii, Illinois, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, New York, Rhode Island, Vermont, Washington, D.C., Washington, and Wisconsin. California, Illinois, Maine, Minnesota, New Mexico, Rhode Island, and Washington have also banned employment discrimination on the basis of gender identity.

Additionally, during the past session of the Nebraska Unicameral, Legislative Bill 475 (“LB 475”) was introduced, which if passed, would have amended Nebraska’s Fair Employment Practices Act to prohibit employment discrimination on the basis of sexual orientation. An amendment to LB 475 excluded religious organizations from its provisions. After lengthy debate in the legislature, a motion to indefinitely postpone LB 475 passed by a vote of 24 to 15. It is unknown whether legislation to include sexual orientation as a protected class under Nebraska’s Fair Employment Practices Act will be proposed during the next legislative session, which is scheduled to convene on January 9, 2008.

If you have any questions regarding these recent legislative changes or would like assistance drafting, reviewing, or revising existing policies or agreements, please contact a member of Koley Jessen’s Employment Law and Labor Relations Practice Group. Additionally, Koley Jessen will focus on gender identity issues in the workplace in our Fall Client Adviser newsletter.

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