

## Know Your Business

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You are an important client, friend or business partner of Wright Penning & Beamer. We value our relationship with you, and as a firm, we want to provide pragmatic information to help your business succeed and grow. "Know Your Business" is a firm publication including recent developments in the law and related areas to assist you, the business owner or manager, in being aware of various issues that could impact your business.

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### **CORPORATE SECURITY PROTECTS SOCIAL SECURITY**

The Michigan legislature implemented the Michigan Social Security Number Privacy Act last year. The Act creates a number of rules governing a business's use of social security numbers – including employees' numbers. This article is not an exhaustive summary, but it provides some key highlights.

#### Prohibited Practices

Under the Act, a company may NOT:

- Display more than 4 sequential digits of an employee's social security number;
- Use social security numbers to identify customer or employee accounts (certain exceptions apply);
- Require employees to use more than 4 sequential digits of social security numbers to access the computer;
- Mail any documents containing more than 4 sequential digits of a social security number (numerous exceptions apply).

#### Privacy Policy Required

The most significant piece of the Act may well be its requirement that any business that regularly obtains social security numbers (including employees' social security numbers) implement a privacy policy. The policy must do the following:

- Ensure the confidentiality of social security numbers;
- Prohibit disclosure of social security numbers;
- Protect access to social security numbers;
- Set forth procedures for dispersing materials containing social security numbers;
- Set penalties for violating the policy;
- Be published in a company's employee manual or similar document.

The Social Security Number Privacy Act carries fines and penalties for violations. If you have not already, check to make sure that you are in compliance.

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## **TEACH WHAT YOU PREACH: ANTI-HARASSMENT TRAINING**

Several years ago, the U.S. Supreme Court issued an opinion that was considered very helpful to employers. Essentially, the opinion said that if the company adopts and follows a reasonable anti-harassment policy, the existence of the policy may serve to shield the company from liability for harassment by an employee of the company. According to this logic, if the company simply adopts and follows a policy, it should be shielded from claims by one worker resulting from the misconduct of another employee.

In a recent opinion by the 6<sup>th</sup> Circuit Court of Appeals (the federal appeals court with jurisdiction over Michigan), the court indicated that a company's policy is not likely to be found reasonable if the company has not made any effort to train its employees on the policy. Accordingly, simply printing the policy in the handbook and distributing the policy will not suffice to offer protection to subsequent claims unless the company can show that it trained its employees – supervisors and managers in particular.

Depending on the circumstances, training might be conducted by company staff or by an outside consultant or attorney. The cost, both in expense and lost productivity, pales compared to the corresponding losses should the company find itself defending a harassment lawsuit.

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## **IS MANAGEMENT RESPONSIBLE FOR THE COMPANY BULLY?**

Typically, employers cannot be held responsible for the intentional conduct of employees that falls outside of the scope of the employee's job duties. If an employee takes a joy ride, for example, driving the company automobile, any resulting property damage will not be pinned on the employer. But in a somewhat surprising opinion, the Michigan Court of Appeals recently ruled "that an employer may share liability for intentional torts committed by an employee who is acting beyond the scope of employment if the employer knew, or should have known, of the employee's violent propensities."

In *Brown v Samuel Whittar Steel, Inc.*, a woman sued the man who sexually assaulted her and also sued his employer. The man had made a series of sexually threatening remarks to the woman, and she had complained about him to his employer on three different occasions. The trial court threw out the case against the employer, reasoning that the employer could not be responsible for its employee's intentional misconduct. The court of appeals reversed the decision and sent the case back to the trial court to permit a jury to decide whether the employer knew or should have known of the employee's "vicious propensities."

In reaching its decision, the court of appeals relied on a 35 year old case from the Michigan Supreme Court. Thus, the decision does not technically change the existing law in the State of Michigan. Employers need to watch, however, to see whether courts will be increasingly willing to hold them responsible for violent conduct by their employees. In the meantime, employers would be wise to pay close attention to employees with a history of workplace violence and to take seriously complaints of threatening behavior by employees.

For a summary of the *Brown v Samuel Whittar Steel* decision, or for more information on how it might affect your workplace, please contact an attorney at Wright Penning & Beamer.