



PROTECTING YOUR EMPLOYEES' PERSONAL IDENTIFYING INFORMATION

“Identity theft” is a daunting phrase and, unfortunately, employers are not immune to this occurring on their premises. Employers obtain and maintain identifying information about their employees for employment purposes. Such information commonly includes names, addresses, social security numbers, names and identifying information of beneficiaries and insureds/participants under employer insurance policies and benefit plans, dates of birth, and other employee information.

It is important for employers to take steps to protect this information from theft and fraud. Some steps to be considered include: conducting background checks for employees who will have access to employee information; implementing a privacy protection policy addressing security measures for employee data; limiting access to such data to certain individuals; implementing proper training of personnel handling such information; obtaining confidentiality agreements; implementing procedures for secure storage of employee data; implementing procedures for proper disposal of paper and electronically stored information following necessary retention policies; maintaining medical records in an appropriate manner; conducting appropriate exit interviews and taking other measures following employment to secure employee data; auditing compliance with policies and procedures; and other steps.

It is also important for employers to know there are now a number of laws which require employer action to protect certain employee information and/or which limit information available to employers. Some of these laws include the Fair and Accurate Credit Transaction Act of 2003 (FACTA), the Fair Credit Reporting Act, The Health Insurance Portability and Accountability Act of 1996 (HIPAA), and the Americans with Disabilities Act of 1990 (ADA). In addition to federal statutes, many states have enacted laws addressing the protection of employee information.

While not all theft and fraud can be prevented, employers who are proactive in securing employee information will be a step ahead of the criminals and will be better able to defend lawsuits arising out of any wrongdoing.



Melanie M. Hartmann
225.382.3422
melanie.hartmann@keanmiller.com

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WHY BE A “STATUTORY EMPLOYER” IN LOUISIANA?

Basically, pursuant to La. R. S. 1032(A)(2) and 1061(A), the “statutory employer” defense allows a “principal” to assert a defense to certain tort liability for injuries sustained by an employee of a contractor. By claiming statutory employer status, the principal attempts to show that the contractor’s employee’s exclusive remedy against it is under the Workers’ Compensation Act. Since 1997, Louisiana law requires that, in order for a principal to assert the statutory employer defense to a tort claim brought by its contractor’s employee, there must be a written contract between a principal and contractor that recognizes the principal as a statutory employer. The presence of the contractual provision creates a rebuttable presumption of statutory employer status, which can be overcome only by showing the contract work was “not an integral part of or essential to the ability of the principal to generate that . . . principal’s goods, products, or

services.” La. R.S. 23:1061(A)(3). One trade-off of the statutory employer status, however, is that pursuant to La. R.S. 23:1061(A)(1), a principal may become responsible, like the contractor, for workers’ compensation benefits of the contractor’s employees. However, this risk can be minimized for a principal by ensuring that the contract includes provisions for adequate insurance coverages and requirements, indemnity, and other protections.



Theresa R. Hagen
225.382.3450
theresa.hagen@keanmiller.com



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