Privacy & Employment Update

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Illinois Sees Rise in GIPA Privacy Suits

As if the onslaught of class actions based on imaginative use of state privacy laws were not already daunting enough, plaintiffs' lawyers have latched on to yet another statute and stretched its meaning to file a new salvo of class actions against businesses including two major multinational corporations, which have been hit with lawsuits in Illinois alleging privacy violations related to their respective employee data practices under the Illinois Genetic Information Privacy Act (GIPA). The suits parallel the plethora of actions alleging violations of the Illinois biometric privacy law, opening a new front in the battle.

The GIPA governs the intersection of genetics, privacy, and employment. Its primary objective is to prevent the disclosure and discriminatory use of genetic information in the employment context. Similar to Illinois' first-in-the-nation Biometric Information Privacy Act (BIPA), its GIPA provides a private right of action related to the acquisition, storage, and utilization of genetic data. The GIPA provides damages of $2,500 for every negligent violation and $15,000 for every willful violation, which, like the BIPA, can result in massive damages requests.

The first suit alleges that the company improperly collected employees' medical histories as part of the pre-employment process. The plaintiffs claim that they were required to submit to a physical during the pre-employment application process, which included a request to disclose their family medical histories. The GIPA states that an employer cannot directly or indirectly "solicit, request, require, or purchase genetic information of a person or a family member of the person … as a condition of employment and/or preemployment application." The lawsuit highlights how litigants claim that the collection of family medical history is protected under the GIPA, if the information was "genetic," and therefore requirements to provide such information may directly violate the GIPA.

The other corporation faces nearly identical allegations that it violated the GIPA by collecting and storing its employees' genetic information by requesting family medical history information as part of a pre-employment physical. The plaintiffs claim that requiring medical history as a condition of pre-employment is in direct violation of the GIPA. As in the first complaint, the plaintiffs in this one assert that they did not consent to the use of genetic information for a workplace wellness program, an exception to the GIPA.

These lawsuits serve as a canary in the coal mine. We expect a significant increase in suits alleging improper collection of employee health and genetic information collection under the GIPA. Failure to adhere to its provisions could result in significant legal consequences, damage to reputation, and loss of trust among employees and stakeholders.

As legal scrutiny surrounding privacy and data protection continues to increase, it is crucial for companies to stay informed about evolving regulations and best practices in employee data management. We encourage employers to review their employee data collection and genetic information handling policies and procedures and to consult legal counsel with any questions or concerns about compliance with privacy laws and regulations.

FOR MORE INFORMATION

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