

ALERT

The Workplace

Be Aware of Liabilities under Cal-WARN Act

The Workplace a Podcast by CalChamber



In **Episode 67** of The Workplace podcast, CalChamber Executive Vice President and General Counsel Erika Frank, and employ-

ment law expert Jennifer Shaw discuss key points, misconceptions and liabilities employers need to be aware of concerning the federal Worker Adjustment and Retraining Notification (WARN) Act and California's equivalent, Cal-WARN.

Key Points for Employers

The WARN Act and the Cal-WARN Act are laws for when employers need to do a mass layoff or a closure of a location, Shaw says.

The federal WARN Act and the California WARN Act are two separate laws that provide for different things, Shaw adds. For example, a temporary layoff or a furlough can activate the

California WARN, but usually not the federal act.

These are two relatively unknown laws that can really get many employers in trouble, Shaw says. Each have specific requirements, definitional issues and boxes to check.

"The big picture... is if you're talking about closing a facility or you've got 75 people at a location and you're... laying off 50 of them or even 25 of them... you need some counsel," Shaw says.

While there are exceptions, for example for a physical calamity or "act of God," these exceptions haven't been litigated and it is unclear what would meet the exceptions, Shaw adds.

Misconceptions

Three significant misconceptions employers face about the WARN Act are the following, Shaw says.

- "Everyone already knows what is going on with unemployment crisis due to the COVID-19 pandemic."

See Be Aware of Liabilities: Page 4

Does State Consumer Privacy Act Prevent Checking Employees' Temperatures?



As the COVID-19 pandemic continues to affect our economy, business owners are trying their best to ensure that employees return-

ing to the workplace are safe to resume their duties, particularly when those duties involve interactions with other people. For this reason, many businesses are implementing safety procedures that often include temperature checks for employees resuming their work.

One issue that may not be top of mind for an employer with regard to temperature checks is the California Consumer Privacy Act (CCPA). How does a law that was supposed to be targeted at big tech companies who collected a consumer's data online apply to a pandemic where an employer takes an employee's temperature before they enter the workplace?

The answer lies in the CCPA's existing employee exemption, which is set to expire at the end of this year.

The Employee Exemption

There are three provisions in CCPA dealing with exemptions for employee information.

- CCPA Section 1798.145(h)(A) basically states that CCPA does not apply to personal information collected by a
- See Does State Consumer Privacy Act: Page 8*

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a Podcast by  CalChamber

Catch Up on COVID-19 Employer Issues

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Labor Law Corner

Limits to Conducting Background Checks on Job Applicants



David Leporiere
HR Adviser

My company uses a background check company to conduct background checks on our applicants. Recently, I received a report that included a felony conviction from 1995. I thought there was a limit on how far back we could look for criminal convictions. Can I consider this conviction in making my hiring decision?

There are both state and federal laws that restrict how a background check can be conducted, and what type of information can be provided in a background check report.

The federal Fair Credit Reporting Act (FCRA) and the California Investigative Consumer Reporting Agencies Act (ICRAA) both restrict what background check companies (referred to in the statutes as “investigative consumer reporting agencies”) and prospective employers can and must do with regards to information on individuals who are applying for jobs.

Disclosure Requirements

There are a number of disclosure requirements and procedural steps incumbent on both employers and the investigative consumer reporting agencies.

In addition, and most relevant to your question, the ICRAA limits the type of information the investigative consumer reporting agency can provide to the prospective employer.

With regards to records of arrest, indictment or conviction of a crime, the investigative consumer reporting agency may provide information that is no more than seven years from the date of “dispo-

sition, release, or parole” (California Civil Code Section 1786.18(a)(7)).

Timing

In your particular situation, although the conviction is from 1995, the investigative consumer reporting agency may be legally entitled to provide you the information if the applicant was released from prison within the last seven years.

You will need some additional information from the background check company to be certain that it was legally authorized to provide you with that information.

The statutes don’t specifically prohibit an employer from considering information that is beyond the limits of what an investigative consumer reporting agency is allowed to provide; however, before considering such information in making your hiring decision, we would suggest consulting your own legal counsel.

Column based on questions asked by callers on the Labor Law Helpline, a service to California Chamber of Commerce preferred and executive members. For expert explanations of labor laws and Cal/OSHA regulations, not legal counsel for specific situations, call (800) 348-2262 or submit your question at www.hrcalifornia.com.

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Labor Law

HR Boot Camp. CalChamber. June 12, Walnut Creek; August 21, Pasadena; September 10, Sacramento. (800) 331-8877.

What Businesses Need to Know About the California Consumer Privacy Act. CalChamber. June 18, Webinar. (800) 331-8877.

Leaves of Absence: Making Sense of It All. CalChamber. June 26, San Diego; August 13, Oakland. (800) 331-8877.

California Leaves for Expecting Employees. CalChamber. September 17, Webinar. (800) 331-8877.

International Trade

POSTPONED: 94th Annual World Trade Week. Los Angeles Area Chamber of Commerce. May 5, Los Angeles. (213) 580-7500.

Introduction to the Bureau of Industry

and Security (BIS) and Export Basics. International Trade Administration. May 5, Webinar. (800) 872-8723.

SBA COVID-19 Financing Programs. Small Business Administration, San Francisco District Office. May 5, Webinar. (415) 744-6820.

Opportunities in Turkey Automotive Sector. U.S. Commercial Service. May 6, Webinar. (800) 872-8723.

Energy Opportunities in Colombia. U.S. Commercial Service. May 6, Webinar. (800) 872-8723.

The Current State of Operations in Australia and New Zealand. U.S. Commercial Service. May 6, Webinar. (800) 872-8723.

LatAm: Alternative Solar Project Financing Solutions. Export-Import Bank of the United States. May 7, Webinar. (800) 565-3946.

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The Workplace

Gauging the Job Performance of Remote Workers



In **Episode 66** of The Workplace podcast, CalChamber Executive Vice President and General Counsel Erika Frank and employ-

ment law expert Jennifer Shaw discuss what employers should consider when monitoring employees working remotely and provide key takeaways for evaluating the performance of remote workers.

While telework is not a new concept, Frank says, it is new to many employers. And even for employers who previously allowed telecommuting, it's new to have so many employees working remotely. Many employers may now be asking themselves: how can we evaluate job performance?

Considerations

Shaw remarks that while there are many temptations in the home setting, some people are able to multitask and thrive in that environment.

When it comes to monitoring how employees use their time during work hours, employers should consider the functions of nonexempt and exempt workers. Whereas exempt workers are paid for the projects or work done as a whole, nonexempt workers fulfill quantifiable work tasks, such as inputting a specified amount of data or answering phone calls for a specific amount of time, Shaw explains.

Employers also should keep in mind that just as their company is working from home, many clients also are at home, which means that the demand a

business typically sees will slow down, Shaw says. Therefore, employers should expect and be understanding of the fact that some of their employees will have less work to do.

Monitoring Software

Monitoring software that tracks what employees do on company computers is available, Shaw says, but it doesn't work very effectively. She explains that monitoring software does not work well if an employee has to connect to a company's network from a remote desktop.

Moreover, while the software may tell an employer, for example, that "Joe" was on social media for an hour, Joe could have visited Facebook for 5 minutes at a time, which added up to an hour, Frank says.

And this is where employers should decide how they want to spend their time, Shaw points out. For example, can an employee use the computer while taking meal or rest breaks? And if so, does the employer want to take the time to match up each minute to confirm that the employee was indeed on a break?

"It's not as automated as you think. It's not like you're just going to get this easy report that says, 'You have a problem employee,'" Shaw says.

A common misconception is that if an employee is not in the office, they're not working. But what "Joe" is doing at home is what he has been doing at work, Frank adds.

Shaw agrees, mentioning that research shows that the habits employees demonstrate at the office are the same habits they have at home.

"So, if you're upset about Joe's... internet usage at home, you better start tracking him in the office," she says.

The bottom line: if employers were not already actively monitoring remote workers before the COVID-19 crisis, they probably should not start doing so now.

"It's probably not the best use of your time or money," Frank says.

Shaw agrees.

"...[Monitoring software] is not some panacea that is going to spit out whether or not you have a good employee," she says.

Tips for Evaluating Performance

For employers wanting to evaluate performance, Shaw and Frank suggested they:

- **Check in weekly**, either personally or through conference software such as Zoom, to engage employees and share new developments. Shaw points out that if an employee does not have much work to be done, he may not want to bring that up in a conference call. Therefore, checking in one-on-one periodically may be a good idea as well.

- **Set expectations**. Given the informal setting of telework, it's very important to set expectations, Shaw says. For example, you may tell an employee that they are expected to respond to emails within a specific amount of time. To determine expectations for a particular job, Shaw recommends that employers should treat it as though they are writing a job description by outlining what the employee is supposed to be doing and how that will be measured.

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New California COVID-19 Supplemental Paid Sick Leave Notice



The California Labor Commissioner has released the [CA COVID-19 Supplemental Paid Sick Leave](#) poster.

Employers who are covered under California's new supplemental paid sick leave requirement for food sector workers (Executive Order N-51-20) must post this notice in a conspicuous place. If the employer's food sector workers don't frequent the workplace, then the employer may electronically distribute the notice.

New Paid Sick Leave

As [previously reported](#), Governor Gavin Newsom's executive order establishes a mandatory supplemental sick

leave for employers with 500 or more employees who are covered by Industrial Welfare Commission [Wage Orders 3, 8, 13 and 14](#), and Health and Safety Code [Section 113789](#).

Eligible employees may take up to 80 hours of sick leave, paid at the highest of: the regular rate of pay for the last pay period, state minimum wage or local minimum wage. However, the rate of pay is capped at \$511 per day and \$5,110 total.

This new leave is in addition to California's mandatory paid sick leave law, the [Healthy Workplaces, Healthy Families Act](#), which requires all employers to provide three days or 24 hours of mandatory paid sick leave.

Many California localities also have sick leave mandates, many of which exceed California's minimum requirements. Several localities have recently

passed COVID-19-related emergency paid sick leave (including [Los Angeles City](#) and [San Jose](#)).

Employers who fall under the new COVID-19 Supplemental Paid Sick Leave law are encouraged to visit the [California Labor Commissioner's website](#), which includes frequently asked questions.

CalChamber Resources

California Chamber of Commerce members can read more about [Paid Sick Leave](#) in the HR Library. Not a member? See what CalChamber [can do for you](#).

Visit the [CalChamber Coronavirus \(COVID-19\) webpage](#) for more COVID-19-related federal, state and local resources. See the [HRWatchdog](#) blog for [additional COVID-19-related posts](#).

Staff Contact: Erika Frank

Be Aware of Liabilities under Cal-WARN Act

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- "Assuming you only have to tell your employees." Employers also need to give notice to their local public entities: the board, the employment development department and retraining organizations.

- "Unemployed people are not going to care about the WARN Act because they're already getting unemployment benefits." Plaintiff lawyers care about the California WARN Act, Shaw stresses. Employers shouldn't assume they are not going to get a claim because someone is on unemployment; that is not the same as being employed for an additional 60 days receiving benefits.

The bottom line is whether you're hiring or firing, performance based or not, employers need to think about their process, Shaw explains. How are you

making and documenting these decisions and how do you prove you made a legitimate decision?

Liabilities for a Misstep

Both the federal WARN Act and the Cal-WARN Act have very specific requirements, many definitional issues, notices employers have to give to employees and special language, Shaw says.

If you are not issuing a notice correctly then there are very significant consequences, Shaw says. For example:

- Employers pay 60 days of wages and benefits. This means if an employee is on COBRA health insurance and has a heart attack when you, the employer, were supposed to be covering them, then the heart attack is now covered by your insurance.

- Penalties and attorney fees.
- Employers are subject to a class action treatment or a Private Attorneys General Act (PAGA) claim because the Cal-WARN is in the Labor Code.

Now that we have more guidance on these laws, the leniency will not be there as much in the future, Frank cautions.

It's not going work if a month from now you are arguing that you didn't know you had to give notice, Shaw adds.

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Food Producer Outlines Keys to Restoring Economy After COVID-19

Restoring confidence and supporting economic growth are two keys to moving forward from the COVID-19 pandemic, the CEO of a Central Valley cheese producer told an Assembly budget subcommittee this week.

David Ahlem, CEO of Hilmar Cheese Company, Inc., was among panelists speaking via remote video at the Assembly Budget Subcommittee No. 6 informational hearing on COVID-19 Recovery and Economic Stimulus on April 27.

Hilmar Cheese Company, a California Chamber of Commerce member, was founded in 1984 by 12 farmer families and today pools supplies from 200 independent dairy farm families, Ahlem explained. The company has both domestic and global sales, manufacturing sites in Hilmar, California, and in Dalhart, Texas, and employs nearly 1,000 people in California's Central Valley.

Charles Ahlem, founding co-owner of Hilmar Cheese, is a member of the CalChamber Board of Directors.

Protecting Lives, Livelihoods

During the last few months, David Ahlem said, the company's focus has been "to protect lives and livelihoods."

He praised and voiced appreciation

for the company's employees and dairy producers for carrying out their special responsibility to "produce food for the world during a time of great uncertainty."

Hilmar Cheese is part of an extensive supply chain involving dairy farmers, processors, packaging converters, retailers and food service operators.



Altogether, the chain supports more than 400,000 direct and indirect jobs.

In recent months, he reported: dairy farmers have seen income fall well below the cost of production; retail customers' business is up overall, but "riddled with volatility and the challenges of operating" in the current environment; food service demand "has fallen off a cliff"; and the value of the cheese Hilmar sells has dropped more than 40%.

Helping Economy

When it comes to restoring confidence, Ahlem said, the more "we can aggressively support, incentivize and adopt" new, safe ways that allow a return to things like eating out, shopping, going to school and the movies, "the quicker we get back on track. This activity drives demand, and demand gets people back to work."

Supporting and not hindering economic growth is imperative, Ahlem said.

"Our economy is like a fleet of ships," he commented. "Some have sunk and are sitting at the bottom of the sea," while others are "partially submerged."

Now is not the time to throw more weight onto the surviving ships, he said. "It is time to reduce weight and increase buoyancy for the benefit of everyone."

The video of Ahlem's remarks is available on the Assembly media on demand website at <https://www.assembly.ca.gov/media/assembly-budget-subcommittee-6-budget-process-oversight-program-evaluation-20200427/video>. His remarks begin at time stamp 54:02.



CalChamber-Sponsored Seminars/Trade Shows

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License Exceptions. International Trade Administration. May 7, Webinar. (800) 872-8723.

The WTO After COVID-19: The View from China. Asia Society Policy Institute. May 12, Webcast. (212) 288-6400.

Business Development Program. Small Business Administration, San Diego District Office. May 12, Webinar. (619) 557-7250.

Complying with the International Traffic in Arms Regulations (ITAR). International Trade Administration. May 12, Webinar. (800) 872-8723.

Foreign Corrupt Practices Act Online Seminar. Louisiana District Export Council. May 13, Webinar. Email JH.Jackson@trade.gov.

Office of Foreign Assets Control. International Trade Administration. May 14, Webinar. (800) 872-8723.

Upcoming ICT Sector Opportunities in Central America. U.S. Commercial Service. May 14, Webinar. (800) 872-8723.

How to Become a Seller on the Amazon Business Marketplace. Minority Business Development Agency. May 15, Webinar. (202) 482-0101.

CANCELED: 2020 Annual Export Conference. National Association of District Export Councils. May 19–20, Alexandria, Virginia. (407) 255-9824.

Defense and Security Opportunities in Mexico. U.S. Commercial Service. May 19, Webinar. (800) 872-8723.

Developing a Corporate Export Management and Compliance Program (EMCP). International Trade Administration. May 19, Webinar. (800) 872-8723.

Complying with U.S. Export Controls. Women in International Trade Orange County. May 19–22, Webinar. (949) 445-0618.

Infrastructure Projects in Argentina, Uruguay, and Paraguay. U.S. Commercial Service. May 20, Webinar. (800) 872-8723.

Overview of Fintech Law and the Mexican Road Toward Open Banking. U.S. Commercial Service. May 20, Webinar. (800) 872-8723.

CANCELED: World Trade Day. Northern California World Trade Center. May 21, Sacramento. (916) 447-9827.

Export Controls at Trade Shows. International Trade Administration. May 21, Webinar. (800) 872-8723.

Alcantara Launch Center Business Opportunities in Brazil. U.S. Commercial Service. May 22, Webinar. (800) 872-8723.

Infrastructure Sector Business Opportunities in Peru. U.S. Commercial Service. May 26, Webinar. (800) 872-8723.

Women's Global Trade Empowerment Forum. U.S. Commercial Service. May 27–28, Dallas, Texas. (769) 610-1644.

Deemed Exports. International Trade Administration. May 27, Webinar. (800) 872-8723.

Opportunities in the Cybersecurity Sector in Argentina, Paraguay, and Uruguay. U.S. Commercial Service. May 27, Webinar. (800) 872-8723.

POSTPONED: Select LA Investment Summit. World Trade Center Los Angeles and the Los Angeles County Economic Development Corporation. May 27–28, Los Angeles. (213) 236-4853.

Opportunities in Mexico's Environmental Technologies Industry. U.S. Commercial Service. May 28, Webinar. (800) 872-8723.

Inaugural Women's Global Trade Empowerment Forum: Expanding Trade in North America and Beyond. U.S. Commercial Service. May 28, June 11, June 25, July 9, July 23, August 6, Webinar. Email: Jessica.Gordon@trade.gov or Richard.Swanson@trade.gov.

Trade Americas: Business Opportunities in the Caribbean Region Conference. U.S. Commercial Service. May 31–June 5. Email: Lesa.Forbes@trade.gov or Delia.Valdivia@trade.gov.

RESCHEDULED: 2020 SelectUSA Investment Summit. International Trade Administration. June 1–3, Washington, D.C. (800) 424-5249.

Exporter Readiness Requirements for Cybersecurity Maturity Model Certification (CMMC)/NIST. International Trade Administration. June 2, Webinar. (800) 872-8723.

Upcoming ICT Sector Opportunities in Colombia. U.S. Commercial Service. June 2, Webinar. (800) 872-8723.

Upcoming Infrastructure Projects in Caribbean Region. U.S. Commercial Service. June 3, Webinar. (800) 872-8723.

Foreign Corrupt Practices Act. International Trade Administration. June 4, Webinar. (800) 872-8723.

Electromobility/Infrastructure Business Opportunities in Chile. U.S. Commercial Service. June 9, Webinar. (800) 872-8723.

Site Visits, Enforcement Actions and Voluntary Disclosures. International Trade Administration. June 9, Webinar. (800) 872-8723.

Upcoming Energy Projects in the Caribbean Region. U.S. Commercial Service. June 10, Webinar. (800) 872-8723.

Brazil's Energy Sector Overview and Opportunities. U.S. Commercial Service. June 17, Webinar. (800) 872-8723.

Panama: Digital Hub of the Americas and a Gateway of Opportunities for U.S. Companies. U.S. Commercial Service. June 18, Webinar. (800) 872-8723.

Infrastructure Sector Business Opportunities in Ecuador. U.S. Commercial Service. June 19, Webinar. (800) 872-8723.

Energy Sector Business Opportunities in Jamaica. U.S. Commercial Service. June 24, Webinar. (800) 872-8723.

The ICT Ecosystem in Ecuador—Challenges and Opportunities. U.S. Commercial Service. June 25, Webinar. (800) 872-8723.

Chile Infrastructure for Aviation/Airport Equipment Sectors. U.S. Commercial Service. June 30, Webinar. (800) 872-8723.

Upcoming Energy Projects in Remote Indigenous Communities in Panama. U.S. Commercial Service. July 1, Webinar. (800) 872-8723.

Opportunities in the Cybersecurity Sector in Peru. U.S. Commercial Service. July 2, Webinar. (800) 872-8723.

Infrastructure Sector Business Opportunities in Central America. U.S. Commercial Service. July 7, Webinar. (800) 872-8723.

Defense and Security Opportunities in the Caribbean Region. U.S. Commercial Service. July 8, Webinar. (800) 872-8723.

ICT Opportunities in Chile: Digital Economy, Cybersecurity and More. U.S. Commercial Service. July 9, Webinar. (800) 872-8723.

POSTPONED: Hannover Messe Trade Shows. Deutsche Messe. July 13–17, Hannover, Germany. +49-511-890.

Upcoming Energy Projects in Argentina. U.S. Commercial Service. August 12, Webinar. (800) 872-8723.

Emergency San Francisco Ordinance Provides Worker Health, Scheduling Protections



On April 21, 2020, the San Francisco Board of Supervisors passed an [emergency ordinance](#) requiring grocery store, drug store, restaurant and on-demand delivery service employers to provide health and scheduling protections to their employees.

Many people, especially those who are particularly vulnerable to COVID-19 due to age or underlying health conditions, use on-demand delivery services to receive food and other essential items while staying safe at home.

To help prevent the spread of COVID-19 through these essential on-demand delivery services, the emergency ordinance clarifies and supplements the city's existing shelter-in-place order's ([Health Order No. C19-07b](#)) requirements for on-demand delivery services, including defining on-demand delivery drivers and shoppers as "employees," even if they may be classified and treated as "independent contractors" for other purposes.

San Francisco does plan to issue an updated shelter-in-place order later this week, but the new order shouldn't affect this emergency ordinance. On April 27, 2020, the Public Health Officers for San Francisco, six other Bay Area counties and the City of Berkeley [announced](#) that they'll issue revised shelter-in-place orders, extending them through May and easing specific restrictions for a small number of low-risk activities.

Covered Employers

Under the emergency ordinance, a "covered employer" employs an employee for any of the following:

- A grocery store, supermarket, convenience store, restaurant, café or other

establishment primarily engaged in the retail sale of food;

- A drug store, pharmacy or other establishment primarily engaged in the retail sale of medication, pharmaceuticals or medical supplies; or

- An on-demand delivery service. An on-demand delivery service is defined as "a third-party online or mobile application or other internet service that offers or arranges for the consumer purchase and same-day or scheduled delivery of food products, medications or other goods directly to no fewer than 20 restaurants, grocery stores, drug stores and other Essential Businesses."

An "employee" includes any person who performs at least two hours of work within the geographical boundaries of San Francisco for a covered employer — including those individuals that the company may treat as independent contractors for other purposes.

Other Requirements

Under the ordinance, businesses providing on-demand delivery drivers and shoppers must provide the following (as all essential businesses are required to do under the existing shelter-in-place order):

- Hand Sanitizer, soap and water, or effective disinfectant in the workplace, disinfecting cleaning supplies, and any needed personal protective equipment such as gloves and face masks (or reimburse employees for the reasonable cost of purchasing such supplies);

- A Social Distancing Protocol in a manner calculated to reach all employees via electronic communication and/or by posting conspicuously on the employer's web- or app-based platform; and

- The option of a "no-contact" delivery method for workers who make deliveries, where feasible, with detailed guidance on how to safely make both

in-person and no-contact deliveries.

Employers must also require delivery drivers to regularly disinfect high-touch surfaces in their vehicles and compensate them for doing so.

Right to Schedule Changes

In addition to the above requirements, the ordinance also provides scheduling protections for qualifying employees working for a covered employer (as defined above). Where reasonably feasible, a worker's request to cancel scheduled work for any reason for which they would otherwise be entitled to use San Francisco's Paid Sick Leave Ordinance, or emergency paid sick leave under the Families First Coronavirus Response Act (FFCRA), must be approved. Qualifying workers must be allowed to use any available accrued paid sick leave or emergency paid sick leave, or to reschedule the work.

The ordinance contains an anti-retaliation provision and authorizes the city's Office of Labor Standards Enforcement (OLSE) to issue regulations and guidelines, and to investigate and enforce violations.

This emergency ordinance awaits Mayor London Breed's signature and will become effective immediately upon signing. It will expire 61 days after enactment or when the public health emergency ends, whichever occurs first.

More Information

Visit the [CalChamber Coronavirus \(COVID-19\) webpage](#) for more COVID-19-related federal, state and local resources, including links to [California Counties Health and Stay-at-Home Order](#) pages.

See the [HRWatchdog](#) blog for additional COVID-19-related posts.

Staff Contact: Bianca Saad

Does State Consumer Privacy Act Prevent Checking Employees' Temperatures?

From Page 1

business about an employee, job applicant, owner, director, officer, medical staff member, or contractor to the extent that the information is collected and used by the business solely within the context of the person's role or former role as a job applicant, employee, owner, director, officer, medical staff member, or a contractor of that business.

- CCPA Section 1798.145(h)(B) generally states that CCPA does not apply to personal information that is collected by an employer that is emergency contact information of an individual, to the extent that the personal information is collected and used solely within the context of having an emergency contact on file.

- CCPA Section 1798.145(h)(C) generally states that CCPA does not apply to personal information that is necessary for the employer to retain to administer benefits a job applicant, an employee, owner, director, officer, medical staff

member, or contractor of that business to the extent that the personal information is collected and used solely within the context of administering those benefits.

The Reasons Matter

Thus, whether CCPA applies to a temperature read for an employee depends on the reason for collecting the data.

If the temperature read is done for purposes of maintaining a safe workplace and used solely for that purpose, then the CCPA likely does not apply.

If the temperature is not being used solely for purposes of employment, such as sharing the information with a face mask company who can then target the employee with ads for purchasing face masks, then the CCPA will likely apply.

Because no case law or clarifications exist, the rule requires a business to analyze the specific exemptions set out in the rule to determine two things: 1) the

source of the information, and 2) whether the information is collected and used in a way that is outside of the context of the employment relationship.

As noted above, the employee exemption to the CCPA referenced above will "sunset" on January 1, 2021 unless the Legislature extends the deadline.

Given it is unlikely this virus is going away and that business as normal will have to change, employee temperature checks may continue to be a desired protocol for businesses to adopt for the long term.

In order to ensure employees are protected as well as the general public, the Legislature will need to act before the employee exemption "sunssets" in the CCPA to make sure it is a practice that employers can legally maintain.

This article originally appeared as a Capitol Insider blog post.

Staff Contact: Shoeb Mohammed

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