

New California Law Allows Sharing of Home Care Aides' Contact Information with Unions on Demand

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A controversial amendment to the California Home Care Services Protection Act (Home Care Act) requires the state Department of Social Services (DSS) to provide the names, phone numbers, and addresses of new or renewing registered home care aides (HCAs) to labor unions on request, unless the aides opt out.

The new law, which raises concerns over privacy rights, became effective on July 1, 2019.

Home Care Act

The Home Care Act (section 1796.29 of the California Health and Safety Code) requires the DSS to create and maintain a registry of HCAs on its website. The registry comprises the registration status, the registration expiration date, and, if applicable, the home care organization with which the HCA is associated.

Section 1796.29 also permits the DSS to collect a variety of private identifiable information (PII) about HCAs, which can include names, addresses, phone numbers, and social security numbers, as well as educational, financial, medical, and employment history data. This information is not publicly available on the DSS website.

Amendment to the Home Care Act (AB 2455)

The amendment, AB 2455, added to section 1796.29 a “carve out” for labor unions that allows them to obtain HCAs’ names, phone numbers, and addresses from DSS.

Labor unions may use an HCA’s name, phone number, and address obtained from DSS for organizing, representation, and assistance activities only. This information may not be disclosed to any other individual or entity. The Home Care Act prohibits an HCA’s PII from being published on the internet.

Under AB 2455, HCAs may prohibit the DSS from sharing their information by completing the “opt out” portion of the registration procedures when they register on the DSS website.

Privacy Rights

Under federal and state law, HCAs have the right to protect their PII. The Home Care Association of America (HCAOA) and the California Association for Health Services at Home (CAHSAH) commenced suit against the State of California on July 3, arguing that AB 2455 is unconstitutional because it compromises HCAs’ privacy rights.

Although AB 2455 allows HCAs who do not want their information shared with unions to “opt out,” HCAOA and CAHSAH argue that HCAs likely will not do so because it would require an HCA to complete an extra step in the registration process. They argue that HCAs may choose not to “opt out” simply to avoid this extra step, unaware they may be compromising their privacy rights.

Union Organizing Activity

AB 2455 likely will increase union organizing efforts across the state in this industry. With ready access to HCAs' names, phone numbers, and addresses, unions can contact them to convince them to support a union in their workplaces.

AB 2455 also could result in increased unfair labor practice litigation before the National Labor Relations Board for, *e.g.*, unlawful employer interference with employee rights under the National Labor Relations Act. Unions may allege, with or without merit, employers required or pressured HCAs to opt out of providing their names, phone numbers, and addresses to unions.

Home care employers should consult legal counsel before considering advising applicants or employees on their opt-out and privacy rights.

Jackson Lewis attorneys are available to assist employers with this and other workplace issues.

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