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DO EMPLOYEES HAVE ANY RIGHT TO REFUSE TO PROVIDE THEIR EMPLOYER WITH THEIR SOCIAL SECURITY NUMBER IN THIS DAY AND AGE OF IDENTITY THEFT?

It seems as if all we hear about these days is the issue of identity theft in the news which has compelled most of us to purchase a paper shredder at home and at the workplace no doubt. We have been trained time and again that we must protect our employee's information from disclosure or we may be sued for a violation of privacy. There are cases allowing employees to refuse to provide social security numbers if it is based upon religious objection, (i.e. Jewish victims of the holocaust) but can an employee refuse to produce their social security number for fear of identity fraud?

The Second Circuit Court of Appeals determined that if an employee refuses to provide their social security number based upon their fear of identity fraud, that an employer can terminate the employee. Thus, the court refused to consider this Employee's claims that her civil rights were violated. Thus, fear of theft of one's identity is not a protected class, at least within this federal jurisdiction. In this case, where the policy of requiring the disclosure of social security numbers from all employees was universally applied, the court determined that this employee failed to state any legitimate legal claim.

Failing to Return an Employee's Belongings Is not Retaliation Pursuant to the Wisconsin Fair Employment Act

The Wisconsin Labor and Industry Review Commission (hereinafter referred to as "LIRC") recently opined that an employee claiming that she was retaliated against by her former employer after her termination relevant to the employer's failure to return her personal belongings was not an adverse employment action worthy of consideration.

In this case, *Gemoules v. Creative Community Living Services, Inc.* (LIRC, 1/13/06), the employee was deemed not have participated in protected activity while she was still employed by this employer. Thus, it was determined that she never filed any complaint or attempted to enforce any right pursuant to the Wisconsin Fair Employment Act. Her sole argument for participating in protected activity was based upon objecting to client care which was not deemed to fall within the WFEA. The Employee was fired after receiving several disciplinary warnings. It was after she was fired that she alleged she was retaliated against when she did not receive her personal property back from the employer. While LIRC noted that the WFEA's retaliation provisions do extend to former employees, for a valid argument to be made there must be significant connection between the alleged adverse action and the former employee's employment opportunities. This employee argued that without her personal belongings, which included some clothes, she was unable to work elsewhere. LIRC did not buy this argument

because it could find no proof that these belongings in question would have been essential to her gaining another similar position. LIRC determined that just because some clothes that she might have worn to a new job and/or interview were not available was not sufficient to trigger any protection pursuant to the WFEA.

The point of this aspect of this article is certainly not to condone not returning personal property that belongs to a terminated employee because while you might not be deemed to be encompassed within the WFEA, you could be investigated for theft. However, this case is interesting relevant to what a terminated employee may or may not allege post their termination as to retaliation against an employer. LIRC is clearly going to require substantial proof of an adverse action in a post-employment situation.