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Corporate Transparency Act will impact 32 million small businesses

Effective Jan. 1, 2024, nearly every legal entity incorporated or registered to do business in the United States will be required to report certain ownership information to the federal Financial Crimes Enforcement Network, or FinCEN.

The Corporate Transparency Act is likely to catch small business owners — most of whom have never had a federal reporting requirement beyond their taxes — by surprise.

Established under the National Defense Authorization Act of 2021, the Corporate Transparency Act aims to curb illicit financial activities such as money laundering, terrorist financing and other fraud. Businesses that fit the criteria of a “reporting company” under the CTA will have one year to comply.

A reporting company is defined as a domestic or foreign corporation, limited liability company, or similar entity that was either formed or registered to do business in any state or jurisdiction. FinCEN estimates that at least 32.6 million organizations will be affected in year one, most of which will be small businesses.

What do you need to report?

Reporting companies must submit a confidential report called a Beneficial Ownership Information Report (BOIR). Required information includes the following:

- The company’s legal and trade names
- Current address
- Jurisdiction of formation
- FEIN or taxpayer identification number

The report must also include information on any “beneficial owners”



as well as the “company applicant.” A beneficial owner is defined as any individual who directly or indirectly exercises substantial control over the business or owns or controls at least 25 percent ownership interest. A company applicant is the individual who filed the documents to create the entity. BOIR will require the following for each:

- Full legal name
- Date of birth
- Current address
- Unique identifying number from an acceptable document (e.g., a passport or driver’s license) as well as copies of such document

Note that the “substantial control” stipulation could cast a wide net over who is considered a beneficial owner. This will include senior officers, as

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**HASSELBERG, ROCK,
BELL & KUPPLER LLP**

4600 N. Brandywine Drive, Suite 200
Peoria, IL 61614
Phone: (309) 688-9400 • Fax: (309) 688-9430
www.hrbklaw.com

Julie L. Galassi • Marci M. Shoff • Michael S. McKinley • Peter J. Lynch
Colt W. Johnson • Melinda L. Mannlein • Siobhan L. Smith • Bryant S. Lowe

California governor vetoes statewide ban on caste discrimination

California Senate Bill 403 would have explicitly added caste as a protected category under the state's Fair Employment and Housing Act (FEHA). However, it was vetoed by Gov. Gavin Newsom in October 2023.

California's FEHA already prohibits discrimination based on ancestry. At issue is whether that's sufficient to address caste-based discrimination. Senate Bill 403 would have clarified that ancestry includes caste, defined as "an individual's perceived position in a system of social stratifi-

cation on the basis of inherited status."

In 2023, Seattle added caste to the city's anti-discrimination laws, becoming the first city in the U.S. to ban caste discrimination and the first outside of South Asia.

Supporters of such legislation argue that caste discrimination is a real problem in the U.S. and that existing laws are not enough. They point to evidence that caste discrimination has occurred in the workplace, in housing, and in education.

UM/UM coverage: What is it and why do you need it?

We all expect that if we are hurt in a car crash that isn't our fault, the at-fault driver's insurance will pick up the tab for our doctor's bills.

But what if that other driver doesn't have enough insurance to cover your losses? Even worse, what if they have no insurance at all?

That's where UM/UM coverage can step in to help you. UM/UM coverage (which stands for underinsured or uninsured motorist coverage) is additional insurance that you can purchase for your own policy that is there to take care of your medical expenses when you get hit by someone without sufficient coverage.

The difference can be stark. For example, if your policy carries \$300,000 in UM/UM coverage — and your losses are higher due to surgery, a lengthy hospital stay, and time out of work — and the other driver's policy covers only \$30,000 worth of harm, your own insurer will cover the

\$270,000 gap.

Had you purchased more UM/UM coverage, say \$500,000 worth, it might be enough to cover all your losses. And the difference between \$30,000 or \$40,000 in coverage and \$500,000, or even \$1 million, may be as little as \$10 or \$10 a month on your insurance bill.

You may, however, have UM/UM coverage without even realizing it. That's because it's required in 14 states (though they vary in how much is required), and it's available in all other states. So, it's a good idea to take a look at your auto policy and see how much you have, if any. And if you don't have UM/UM coverage, or you have a minimal amount, you should talk to your insurance agent about increasing your coverage as soon as possible.

After all, an accident can happen anytime, and once it does, it's too late to buy more coverage to pay for those losses.

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New York case highlights risk of AI as a job-screening tool

A recent case from New York provides two lessons to employers: that the use of artificial intelligence as a job-screening tool creates liability risk and that age discrimination is taken seriously.

In May 2022, the U.S. Equal Employment Opportunity Commission brought a complaint against iTutorGroup, a provider of online education and tutoring services to students in China, alleging that it violated the federal Age Discrimination in Employment Act, which protects workers 40 and older from job discrimination based on their age.

According to the EEOC, the company programmed its AI-based job application software for prospective tutors automatically to reject female applicants aged 55 or older and to reject male applicants 60 or older.

The case arose when an applicant who was initially rejected resubmitted their application with a more recent birthdate and then received an interview. The applicant filed a charge with the EEOC, which then sued iTutorGroup in federal court on that applicant's behalf as well as more than 200 other qualified U.S.-based applicants who

were allegedly rejected due to their age.

Though the company denied any wrongdoing, it agreed to settle soon after the EEOC filed suit.

Under the terms of the settlement, iTutorGroup must pay \$365,000, to be distributed to applicants who were automatically rejected due to their age.

Additionally, while iTutorGroup stopped hiring tutors in the U.S., if it wishes to resume U.S.-based hiring, it will be required to provide extensive ongoing training to those involved in the hiring process and to issue a robust anti-discrimination policy. It also may no longer request applicants' birthdates.

Should iTutorGroup resume hiring in the U.S., it will be subject to EEOC monitoring for five years, and it will be required to notify and interview those applicants it allegedly rejected due to age.

None of this suggests that employers should stop using AI tools altogether, but any employer using AI as part of its job-screening process should certainly consult with an attorney to ensure it's not being deployed in a way that will get the company in hot water.

What is 'supervised custody exchange' and how does it work?

One of the most emotionally fraught parts of a divorce can be the "custody exchange" in which one parent hands the child off to the other. If there's a lot of unresolved emotional pain and recrimination left over from a marriage that didn't work out, it can make for a tense or even explosive situation.

If the thought of encountering your ex-spouse or partner while handing off your kids creates anxiety or even fear, you should discuss the possibility of a supervised custody exchange with an attorney.

Also known as a "safe exchange" or "monitored exchange," this is when a third party is present at the exchange to help ensure a smooth handoff. In some situations, this person can facilitate the handoff so that the parents do not encounter each other at all. That not only protects parents from one another, it can help keep the child from witnessing ugly, potentially traumatizing conflict.

The most common way to arrange this is through a court order, and your attorney can help you make the case to the judge that this is a good idea. The court determines who is to serve as the supervisor. It could be a trusted friend or relative of the requesting parent or a professional that the family hires (the court may want to make sure that the supervisor is someone trained to handle a contentious situation without escalating it by taking sides).



Additionally, the court can order the exchange to happen at a designated public meeting spot, like a library or a school. In some instances, the court might feel most comfortable ordering the exchange to occur at an "exchange center": a facility run by the local government or a private organization that is set up for this purpose.

Supervised custody exchanges also do not necessarily need to be ordered by the court. Parents can decide to do this on their own if they both agree. In those instances, it's still a good idea to have the details included in your parenting plan. A good lawyer can help craft this in a way that a judge is likely to accept.

Corporate Transparency Act will impact 32 million small businesses

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well as those with indirect control through joint ownership and individuals who control an intermediary entity. Beneficial ownership will also extend to those individuals represented by a nominee such as a custodian, agent, trustee, etc.

When are reports due?

Reporting companies formed before Jan. 1, 2024, will have a year to submit their BOIR. However, any companies formed on or after that date may have as little as 30 days to file. (A Notice of Proposed Rulemaking has been filed that will likely offer a temporary 90-day extension, but only for those companies formed in 2024.)

Additionally, businesses must keep their beneficial ownership information up to date and file an amended report within 30 days of any changes.

Which businesses are exempt?

The CTA identified a number of entities that are exempt from the definition of reporting company:

- SEC-reporting companies
- Regulated financial services companies

- Insurance companies
- Tax-exempt entities
- Inactive entities
- "Large operating companies" with more than 20 full-time employees and a prior year tax return showing more than \$5 million in gross receipts, operating from physical premises in the U.S.

Compliance challenges

The CTA goes into effect on Jan. 1, 2024. It is important for businesses to identify beneficial owners, collect the required information, and plan to file the beneficial ownership report.

Businesses may have questions over who qualifies as a beneficial owner. That can be difficult for businesses with complex ownership structures or multiple layers of ownership. Others may need time to gather acceptable documentation from beneficial owners who live outside the United States.

If you have questions about the CTA and how to comply, consult with an attorney.

4600 N. Brandywine Drive, Suite 200
Peoria, IL 61614
Phone: (309) 688-9400 • Fax: (309) 688-9430
www.hrbklaw.com

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IRS extends deadline for Roth contributions by two years

The IRS has extended the deadline for Roth catch-up contributions by two years, to 2026. That means that employers have two more years to meet a new provision of the Secure 2.0 Act, an update to retirement savings law that passed last year.

Employers have the option to allow employees aged 50 and older to make catch-up contributions to their retirement plans. In 2023, older workers can save an extra \$7,500 — on top of the standard contribution limit of \$22,500 — to boost their accounts before retirement.

Currently, participants can choose to make those catch-ups on a pre-tax or a Roth (post-tax) basis. But beginning in 2024, Secure 2.0 would have required that employees making more than \$145,000 a year make those contributions to a Roth account only.

The IRS extended the deadline in response to con-



cerns from taxpayers and retirement plan sponsors. The risk was that some employers would consider eliminating catch-up contributions altogether rather than deal with the administrative burden. Now employers and plan sponsors have two more years to administer the change.