



Electronic Dispatch

Labor and Employment Law Information Memo

July 2005

[Go to BS&K Labor and Employment Law Home Page](#)

FEDERAL TRADE COMMISSION ISSUES RULE REGARDING DISPOSAL OF CERTAIN TYPES OF APPLICANT AND EMPLOYEE INFORMATION

The Federal Trade Commission ("FTC") recently issued a rule, effective June 1, 2005, requiring any person or entity that maintains or possesses "consumer information" for a business purpose to take reasonable measures to protect against unauthorized access or use when disposing of such information. The rule was promulgated under the Fair and Accurate Credit Transactions ("FACT") Act, which amended the Fair Credit Reporting Act ("FCRA") to exclude certain types of workplace investigations from the burdensome notice and consent requirements contained in the FCRA. (To access our firm's April 2004 Labor and Employment Law Information Memo describing the FACT Act amendments to the FCRA, please go to <http://www.bsk.com/archives/infomemo.dbm?StoryID=420>). The purpose of the FTC's disposal rule is to reduce the risk of identity theft and other forms of consumer fraud.

The term "consumer information" under the rule includes any record about an applicant or employee (whether in paper, electronic, or other form) obtained from a consumer reporting agency bearing on the individual's credit worthiness, character, general reputation, personal characteristics, or mode of living that is used to determine the individual's eligibility for employment. All personal identifiers contained in such consumer reports, including names, social security numbers, drivers' license numbers, telephone numbers, physical addresses, and e-mail addresses also fall within the scope of the FTC's disposal rule. Accordingly, all employers who obtain consumer information with respect to applicants and employees (for example, as part of a background check) must be aware of the requirements of the rule, and must take appropriate measures to comply with the rule when disposing of such information.

The FTC's rule does not dictate a specific method of disposing of consumer information, but instead provides examples of what could constitute "reasonable measures" to protect against unauthorized access or use when disposing of such information. These examples include:

- implementing and monitoring compliance with policies and procedures that require the burning, pulverizing, or shredding of papers containing consumer information so that the information cannot practicably be read or reconstructed;
- implementing and monitoring compliance with policies and procedures that require the destruction or erasure of electronic media containing consumer information so that the information cannot practicably be read or reconstructed; and
- after due diligence, entering into and monitoring compliance with a contract with another entity engaged in the business of record destruction to dispose of material identified as consumer information in a manner consistent with the FTC rule.

An employer who wishes to enter into a contract with another entity engaged in the business of record destruction can satisfy its "due diligence" obligation by:

- reviewing an independent audit of the disposal company's operations and/or its compliance with the FTC's rule;
- obtaining information about the disposal company from several references or other reliable sources;
- requiring that the disposal company be certified by a recognized trade association or similar third party;
- reviewing and evaluating the disposal company's information security policies or procedures; or
- taking other appropriate measures to determine the competency and integrity of the disposal company.

Bond, Schoeneck & King, PLLC • New York • Albany Buffalo Garden City Ithaca New York Oswego Syracuse Utica • Kansas • Overland Park
Bond, Schoeneck & King, P.A. • Florida • Bonita Springs Naples



Employers should immediately review their current practices regarding the disposal of consumer information, and take appropriate steps to ensure compliance with the FTC's disposal rule. These steps should include implementing policies and procedures concerning the identification, handling, and destruction of consumer information, and training the employees who are responsible for following those policies and procedures.

If you have any questions about the FTC's disposal rule, or need any advice with respect to conducting background checks on applicants or employees, please contact:

In the Capital District, call 518-533-3000 or e-mail:

John M. Bagyi	jbaggi@bsk.com
Nicholas J. D'Ambrosio	ndambrosio@bsk.com

In Central New York, call 315-218-8000 or e-mail:

R. Daniel Bordoni	dbordoni@bsk.com
Robert A. LaBerge	rlaberge@bsk.com

On Long Island, call 516-267-6300 or e-mail:

Terry O'Neil	toneil@bsk.com
--------------	----------------

In New York City, call 646-253-2300 or e-mail:

Michael I. Bernstein	mbernstein@bsk.com
Louis P. DiLorenzo	ldilorenzo@bsk.com
Stanley Schair	sschair@bsk.com

In Western New York, call 716-566-2800 or e-mail:

Robert A. Doren	rdoren@bsk.com
Daniel P. Forsyth	dforsyth@bsk.com
Richard C. Heffern	rheffern@bsk.com