



HUMAN RESOURCES UPDATE

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ADD A PAPER SHREDDER TO YOUR SHOPPING LIST

A rule proposed in April 2004 by the Federal Trade Commission (FTC) takes effect June 1, 2005. This rule addresses how sensitive information is disposed of (not when – there are already rules for that).

The rule is a result of the Fair and Accurate Credit Transactions (FACT) Act, which was signed into law December 2003 as part of the battle against the growing crimes of consumer fraud and identity theft.

It requires every employer with one or more employees to appropriately dispose of any documents—whether paper, electronic or other format—that contain consumer information derived from a credit report. “Any company, regardless of industry or size, that possesses or maintains consumer information for a business purpose will be subjected to the rule,” the FTC says. Even an individual who employs a nanny is subject to the rule, an FTC attorney, Katherine Armstrong, says.

This means that all employers who conduct pre-employment credit checks, background checks, or maintain any type of consumer report on your employees must comply with the FACT Act’s Disposal Rule when it comes time to purge those records.

Personal consumer information could be a telephone number, address, or Social Security number.

Failure to comply could result in federal fines up to \$2,500 per violation and state fines up to \$1,000 per violation. In addition to federal and state law enforcement, employees or

identity theft victims could file a private or class action lawsuit against the employer, according to Armstrong.

The FTC does not specify how information must be disposed of, but it states that “reasonable measures must be taken to protect against unauthorized access to or use of the information.”

Shredding, pulverizing or burning paper records so consumer information is unreadable would be appropriate disposal methods, the FTC says. Disposal could mean going the “do-it-yourself” route with a personal shredder, or paying a vendor to do it for you, depending on the volume of records requiring disposal.

Information stored electronically, such as on computer disks or hard drives, could be overwritten or wiped clean using tools you can purchase or obtain for free on the internet, or even, as the FTC suggests, by taking a hammer to the disk or hard drive containing the information.

Reasonable measures likely will require establishing policies, procedures, and employee training for disposing of information properly, the FTC notes.

The Hopkins Group strongly suggests that you amend your Record Retention Policy to include language about the disposal and destruction of this type of information. Note that a written policy, training on the policy with your employees, and adherence to it will help your company in the event of a complaint.

NEW FMLA REGULATIONS

For those of you with 50 or more employees, the Family Medical Leave Act applies to your business. The Department of Labor has been promising some revisions to the record keeping aspects of the Act and these were supposed to be issued at the end of May. We will keep you posted with the details when the revisions are released.

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CLASS ACTION LAW AND THE FLSA

A newly enacted federal law that addresses class actions and other lawsuits filed by large groups of plaintiffs may affect "collective actions" brought under the Fair Labor Standards Act (FLSA). The new law very likely will affect similar state law-related actions, by directing more of these lawsuits into federal rather than state court.

The full impact of the new law, which was passed by Congress and signed by President Bush as the Class Action Fairness Act of 2005 (Pub. L. 109-2), will not be known for some time. However, the act may affect the way large collective actions proceed under the FLSA.

For instance, some federal courts are more hesitant about certifying class actions than are state courts, meaning it could be harder for employees to pursue these actions (and other group actions) in federal court. If more cases are pushed into federal court, it may be harder for employees to bring -- and to win -- actions involving large groups of plaintiffs. In this context, the new law may be good news for large employers that in the past have faced large and costly lawsuits under the FLSA.

NON-EXEMPT EMPLOYEES AND OUT-OF-TOWN TRAVEL

Employees who are sent out of town for work assignments need not be paid for time spent traveling voluntarily between the out-of-town work sites and their homes during any period they are off of work, the U.S. Department of Labor (DOL) held in an administrative letter ruling recently made available.

In the Sept. 21, 2004, opinion letter, DOL's Wage and Hour Division responded to an employer that sends crews of hourly workers on out-of-town assignments lasting two weeks or more. During the job assignments, the employees, who qualify for overtime under the Fair Labor Standards Act (FLSA), work for 10 consecutive days and take off the following four days. The employer pays the employees for travel time to and from the out-of-town work sites at the beginning and end of the projects.

DOL in the letter ruling pointed to its regulations (29 C.F.R. §785.37) that require pay for travel time away from the employees' home communities. But the department ruled that voluntary trips home from the work site and back again did not qualify as compensable work time under the FLSA. "Travel at the employee's own option and for his or her sole convenience need not be considered hours worked under the FLSA," wrote DOL's Office of Enforcement Policy Fair Labor Standards Team.

THE HOPKINS GROUP'S NEW WEBSITE

Please take a look at our updated website! We've added some features, including past newsletters, and rearranged the information so that it's easier to find.

Please let us know what you think!

This newsletter is a periodic publication of The Hopkins Group, LLC and should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have. For further information about these contents, please contact any representative of The Hopkins Group, LLC.

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