



New Rule Governing Disposal of Criminal Background Checks

Many employers are surprised to learn that the FTC regulates an employer's ability to use criminal background checks and credit histories when evaluating job applicants. FTC regulations require, among other things, that employers (1) obtain the individual's authorization before conducting these background searches and (2) provide the individual with an opportunity to challenge the accuracy of the search results.

Prompted by concerns of identity theft, on June 1, 2005, the FTC began enforcing new regulations aimed at compelling all users, including employers, to dispose of consumer information – including criminal records checks and credit histories – in a way that would prevent unauthorized use. Fortunately for employers, the requirements are not overly burdensome:

- No one method of disposal is mandated. Instead, employers are required to take “reasonable steps” to protect against unauthorized access or use.
- According to the regulations, “reasonable steps” for the in-house disposal of this information may include “burning, pulverizing, or shredding” papers so that they cannot be read or reconstructed, and physically destroying disks or erasing electronic information so that it cannot be read or reconstructed.
- If an employer uses a vendor, either to obtain the information or to dispose of it, the employer should satisfy itself that the vendor is complying with the FTC disposal rule. The employer may review an audit of the vendor's operations, obtain multiple references, require certification from a trade association, or otherwise take action to determine the vendor's “competency and integrity.”
- Nothing in the new regulations tells employers to keep background information for any particular length of time – or to dispose of it at any specific time. The regulations leave that decision to the employer, since what is reasonable could vary given the circumstances.
- Every employer should maintain records of the steps it has taken to comply with its policy on proper disposal.

TIP

Effective June 1, 2005, the FTC began enforcing its disposal rule for consumer information, including criminal background checks and credit reports. Employers should develop a written policy on the disposal of this information, train the responsible personnel, and keep written records confirming that they are monitoring compliance.



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