

The new Fair and Accurate Credit Transaction Act amends the Fair Credit Reporting Act (FCRA)

On December 4, 2003, President Bush signed an amendment to the Fair Credit Reporting Act (FRCA) into law. The amendment, called the Fair and Accurate Credit Transaction Act (FACTA), amends and reauthorizes FRCA.

Two sections of this act are of particular interest to employers: Title IV restricts employer access to employee credit reports that include medical information about the employee and Title VI removes the notice and disclosure requirements for third-party investigations of employee misconduct.

Medical Information Restricted

Title IV of FACTA, which takes effect June 1, 2004, prohibits consumer reporting agencies from furnishing an employer with a consumer report that contains medical information about an employee or applicant. An exception can be made if the employee or applicant gives the employer specific written consent to access the information and the information is relevant to his or her employment. The consent must describe in "clear and conspicuous language" how the information will be used.

FACTA states that any person who receives medical information in a consumer report is prohibited from redistributing that information, except as necessary to carry out the purpose for which it was initially disclosed.

FACTA's definition of medical information is similar to HIPAA's definition of health information, except that it specifically excludes demographic information such as gender or age.

Third-Party Investigations

Title VI of FACTA removes obstacles to workplace investigations created by the "Vail Opinion Letter" which was issued in 1999 to clarify the Fair Credit Reporting Act.

The Vail letter says that FRCA's notification and disclosure requirements apply whenever employers hire third-party organizations to investigate workplace sexual harassment allegations. The letter states that outside investigators are considered consumer reporting agencies and that an employer would have to obtain the accused employee's consent before investigating any charges against him or her. Also, if the investigation led to an adverse employment action (such as discipline or firing), then the employer must give the employee a complete copy of the investigative report, including the names of witnesses and other confidential information.

Now, under FACTA, workplace investigations conducted by third parties are exempt from FRCA's notice, consent and disclosure requirements if the investigation involves suspected misconduct relating to employment or compliance with federal, state or local laws and regulations, the rules of a self-regulatory organization, or any preexisting written employer policies. Workplace investigations by employers continue to be exempt from the FRCA. Under FACTA, if the investigation leads to an adverse employment action, the employee or applicant must be given only a summary of the investigative report. The report need not identify any information sources.

For more information about FACTA, please contact CTSI at 303-861-0507.

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