

EMPLOYMENT LAW BRIEFING

September 16, 2005

World Wide Web: Whitford Law Offices LLC is pleased to announce that we have established our website on the internet. Please visit us at www.TheEmployerAdvocate.com. We have appreciated the suggestions and support from clients who visited our "preview" site. We consider the website a work-in-progress and welcome comments and suggestions.

Mileage Reimbursement Rate Increase: In response to recent increases in fuel prices the IRS has increased the standard rate for mileage reimbursement, used by many employers, to 48.5 cents per mile. The temporary increase of 8 cents per mile is the largest single adjustment to the rate and is effective through the end of the calendar year.

Discarding Employee's Personal Information: In addition to recordkeeping rules and confidentiality requirements, under recently activated provisions of the 2003 Fair and Accurate Credit Transactions Act ("FACT"), employers are now subject to regulations governing the disposal of certain employment records. Personal employee information, including phone numbers, addresses and social security numbers, in a "consumer report" must be destroyed before being discarded. Paper documents must be shredded or burned and computer disks must be wiped or smashed. Consumer reports may include background checks, criminal histories, driving records and investigatory summaries. Employers are subject to fines for violations. We recommend destruction of **all** employment records being discarded – regardless of the source.

Third Party Workplace Investigations: The FACT also clarifies rules governing workplace investigations conducted by third parties. If the investigation concerns suspected misconduct or compliance with employment regulations or the written policies of the employer, there are two requirements. First, the contents of any report of the investigation must be kept strictly confidential. Second, if adverse action is taken against any employee as a result of the investigation, the affected employee must be provided with an investigation summary disclosing the substance of the information prompting the action.

Layoff Procedures: An August decision handed down by the Ninth Circuit Court of Appeals underscored the importance of basing layoff decisions on the application of objective factors. In *Durante v. Qualcomm, Inc.*, the Court considered a layoff in which had been based upon application of a variety of selection standards and affected a disproportionately high number of older workers. The Court did not view the utilization of varying criteria as problematic because the employer "maintained an objective approach." Although there was a disparate impact, based upon age, the Court concluded that there was not unlawful age discrimination because the employer's decisions were based upon "legitimate business reasons." The documented use of objective selection criteria in a layoff is critical if it becomes necessary for employers to defend their actions against claims of discrimination.

Please contact our office if you have questions about the material in this newsletter, or other employment law compliance concerns.

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