



Amendments To Fair Credit Reporting Act Loosen Notice And Disclosure Requirements Of Third Parties Hired To Investigate Employee Misconduct

On December 4, 2003, President Bush signed into law the Fair and Accurate Credit Transactions Act of 2003 (FACT Act). The primary purpose of the FACT Act is to amend the Fair Credit Reporting Act (FCRA) to prevent identify theft, improve resolution of consumer disputes, improve the accuracy of consumer records, make improvements in the use of and consumer access to credit information.

However, the FACT Act also changes the FCRA notice and disclosure requirements relating to third-party investigations into employee misconduct. This amendment was in response to a 1999 Federal Trade Commission (FTC) opinion letter stating that employers who hired third parties to investigate employee misconduct or wrongdoing, such as sexual harassment, embezzlement, and threats of violence, were required to comply with the FCRA. Therefore, employers who hired third parties to investigate such employee misconduct were required to notify targeted employees before conducting an investigation, obtain the employees' prior consent, and fully disclose any investigative reports prior to taking any adverse action against the employee.

Section 611 of the FACT Act addresses the problems caused by this FTC opinion letter and excludes certain employee

investigation communications from the definition of consumer report under the FCRA.

The FACT Act relieves employers who hire third parties to investigate employee misconduct or wrongdoing from the requirements of the FCRA. Under the FACT Act, employers are now only required to disclose to the employee a summary containing the nature and substance of the communication upon which any adverse action was based. This summary can be disclosed after taking the adverse action.

Prepared by Edwards, Ballard, Bishop, Strum, Clark and Keim, P.A., located in Spartanburg, South Carolina. The firm emphasizes Labor, Employment, OSHA, Employee Benefits, Environmental and Immigration Law representing management exclusively. This article is not intended as legal advice, but rather is to inform our members of current legal issues which may affect their operations. If you desire additional information, you may contact a member of the firm at (864) 542-8612.