



Murphy Austin Adams Schoenfeld LLP

Employment Law Newsletter

Issue 5 – June 15 , 2005

Destroying Personal Information

Beginning June 1, 2005, federal law^[1] requires all employers to burn, shred, smash, wipe, or otherwise destroy personal information obtained from consumer credit reports when disposing of a record in paper, electronic, or any other form. Accordingly, employers must identify the documents, disks, hard-drives, servers, etc. containing any personal information received from credit reports, and then ensure that the records contained thereon may never be read again after they are discarded. Failure to comply can result in severe penalties—including, but not limited to, a \$2,500 fine per incident or the cost of any damage caused by the failure to comply.

Meal Break Obligations Trump Collective Bargaining Agreements

A recent 9th Circuit opinion^[2] held that employers must follow California law regarding meal periods regardless of whether the employer and the appropriate union agreed to different meal periods in an otherwise valid collective bargaining agreement. The court reminds that meal periods are not negotiable and must be given to every employee covered under California's meal-period laws.

In the near future, California is expected to release new regulations regarding meal and rest periods. The new regulations are likely to allow more opportunity for employees to waive their rights to meal periods. Stay tuned as to whether the new regulations will alter the current law recited in this 9th Circuit opinion.

Clarity in Age Discrimination Suits

The U.S. Supreme Court recently held that an employee may sue his or her employer for age discrimination under the ADEA when the employer's practices have a disparate impact on older workers. Consequently, a practice that seemingly has nothing to do with age on its face may nevertheless be illegal if it impacts older workers (i.e. those over 40) more harshly than younger workers. With cases alleging a disparate impact, the intent of the employer does not matter—only the consequences. Previously, there was some disagreement among federal courts as to whether disparate impact suits were allowed under the ADEA. It is now clear that an employee may bring discrimination claims against his or her employer based on a disparate impact.

Employers should continue to evaluate their practices with an eye towards the impact that those practices have on protected classes of employees.



[Dennis R. Murphy](#)



[Kelly L. Borelli](#)



[Mary E. Farrell](#)



[Brian S. Crone](#)



[Randall J. Hakes](#)

You may contact the above attorneys via e-mail by clicking on their name or using the contact information below.

1000 G Street
Third Floor

Sacramento, CA 95814
916/446-2300 (phone)
916/503-4000 (facsimile)

or

visit our website at www.murphyaustin.com

Please be assured that we make every effort to make certain that the information contained in this article is current at the time the article was prepared. Because laws and legislation are constantly changing, please contact us if you are unsure whether this material is still current. Nothing contained herein is meant to be legal advice. Please contact us to answer any questions you may have.

^[1] The Fair and Accurate Credit Transactions Act ("FACT"), 117 Stat 1952, PL 108-159.

^[2] *Valles v. Ivy Hill Corp.* (9th. Cir, 2005) No. 03-55440