

L a b o r & E m p l o y m e n t
A L E R T

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NEW YORK ENACTS DISPOSAL OF PERSONAL RECORDS LAW

As part of its battle to prevent identity theft, New York's governor has signed the Disposal of Personal Records Law, Assembly Bill 08456B. It will be codified at Section 399-h of the New York General Business Law. This new statute requires New York business entities, when disposing of records that contain personal information, including personnel records, to take reasonable action to ensure that no unauthorized person can have access to the personal information contained in the document. This action may consist of shredding, destruction, modification, or other action reasonably calculated to ensure that no unauthorized person will have access to the personal information. This law also provides that a failure to properly dispose of records by any business under this law may result in a civil penalty of up to \$5,000.

The Disposal of Personal Records Law is part of a package of laws simultaneously enacted and signed into law in New York to protect employees and consumers from identity theft. The other two statutes enacted at the same time as the Disposal of Personal Records Law are the Security Freeze Law and the Anti-Phishing Act of 2006. With the enactment of the law regulating disposal of personal information, New York joins a growing list of more than 15 states that have enacted or have

pending legislation that regulates privacy of personal information, destruction of personal data, and employer obligations to provide notice of security breaches.

Effective Date: The statute will become effective 180 days after its enactment, or around December 1, 2006.

Caution: It is important to note that this statute in no way alters an employer's obligation to retain records in accordance with both federal and state laws and regulations, nor does it mandate the disposal of records at any time. Instead, it imposes requirements on the method of disposal of records once the decision is made to dispose of them. Reference should continue to be made to federal and state record retention requirements, as well as to any pending litigation, in making decisions regarding disposal of personnel records.

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This document is a basic summary of legal issues. It should not be relied upon as an authoritative statement of the law. You should obtain detailed legal advice before taking legal action.