



Jill Blackmer

Jill has extensive experience representing employers in a wide variety of employment issues. Her practice includes both counselling and litigation. Jill also conducts internal investigations and provides employee training.

She is a frequent speaker on employment issues, a member of the Defense Research Institute and the author of the New Hampshire chapter of the 50-State Survey of Employment Libel and Privacy Law. Presently a trustee of Concord Hospital, Jill also is a member of the Human Resource Committee of the NH Business and Industry Association.

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Scanning, Recording, Retaining or Storing Driver's License Information

On January 1, 2003, a new law went into effect in New Hampshire that prohibits anyone, unless authorized by the Department of Safety, from knowingly scanning, recording, retaining or storing, in any electronic form or format, personal information obtained from a driver's license. The new law, known as RSA 263:12, X, still permits a person or business to record in a non-electronic form or format the personal information from a driver's license provided the license holder consents. Anyone violating the new law is guilty of a misdemeanor and also may be subjected to a civil action for money damages.

VERIFICATION OF EMPLOYMENT ELIGIBILITY

The Department of Safety fortunately adopted interpretative rules, Saf-C 5606, on December 30, 2002, that provide guidance to employers and businesses by explaining how the new law will operate. For example, since many employers copy drivers' licenses as part of their compliance with the Immigration and Naturalization Service I-9 form, they will be relieved to know that an employer is permitted to record, store or retain personal information from a driver's license in any electronic form for the limited purpose of verifying the eligibility of an employee to work in the United States, provided the employer (1) is acting in compliance with the Immigration Reform and Control Act of 1986, (2) does not rent, sell, transfer or make the information available to another person, and (3) does not use the information to create, combine or link with any other data on any database not controlled exclusively by the employer. In other words, an employer may continue to photocopy a driver's license or enter personal information from a license into its human resource database so long as it complies with the three requirements listed above.

USE OF INFORMATION BY RETAILERS

In addition, many retail businesses have routinely recorded, stored or retained personal information available on a driver's license to verify the identity, age or address of a customer, such as for age restricted products like alcohol or tobacco products or when a customer makes payment by check. Some employers may also record and store personal information of their employees as

part of their human resource database. The regulations appear to still allow these practices but only if specific and numerous conditions are satisfied

The requirements are as follows: (1) information may be obtained only to verify identity of consumer or prevent fraud; (2) the business or employer generally may not rent, sell, or make the information available to another person; (3) the information generally may not be used to create, combine or link with any other data on any database which is sold, rented or made available to another person; (4) the business must be acting in compliance with applicable federal laws (HIPAA, USA Patriot Act, Gramm-Leach-Bliley Act and Fair Credit Reporting Act); (5) the holder of the license must consent to the information being recorded, stored, retained or transmitted to another business; and, (6) the information must be obtained for one of the following conditions:

- to administer a transaction requested by the license holder,
- in connection with servicing or processing payment for a product or service requested by the license holder, or
- for employment screening, so long as the personal information is not transferred, combined or linked with any other data on any database not controlled exclusively by the employer.

WHAT LIES AHEAD?

The requirements without doubt impose new and in some cases substantial burdens on businesses and employers and in some instances may dictate changes in how businesses operate and treat personal information obtained from a driver's license. The changes also will likely increase the cost of doing business. In light of these new and costly obligations, there will no doubt be a legislative effort to amend the law.