



JASPAN SCHLESINGER HOFFMAN LLP
ATTORNEYS AT LAW

MEMORANDUM

TO: Our Valued Clients

DATE: February 13, 2007

SUBJECT: Disposal of Personal Records Law

We are writing to inform you that New York State recently passed the Disposal of Personal Records Law, effective as of December 6, 2006, which affects the manner of disposal of records containing personal employee information. The new law, N.Y. General Business Law §399-h, addresses the growing problem of identity theft by imposing civil liability on a “business person” (meaning any natural person, or agent or employee of such person that is conducting business for profit) if, when disposing of records containing personal identifying information, it fails to shred the record, destroy the personal identifying information contained in the record, modify the record to make the personal identifying information unreadable, or take actions consistent with commonly accepted industry practices that it reasonably believes will ensure that no unauthorized person will have access to the personal identifying information contained in the record.

The statute defines a “record” as any information in any physical form whatsoever and “personal identifying information” as any personal information, such as name, number, personal mark or other identifier, in conjunction with social security numbers, driver’s license or identification card numbers, mother’s maiden names, account numbers, credit or debit card numbers, passwords, ATM numbers or codes, electronic serial numbers, or PIN numbers. Civil penalties of up to \$5,000 and injunctive relief may be imposed by the state attorney general for violation of the requirements for proper disposal of personal employee information. However, an affirmative defense is available if an employer can show that it used due diligence in its attempts to properly dispose of such records.

Feel free to contact us if you have any questions regarding this new law. We will be happy to be of assistance to you.