



For your information

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Illinois Becomes Second State to Prohibit Employer Access to Social Media Passwords

On August 1, 2012, Illinois Governor Pat Quinn signed into law a bill amending the state's Right to Privacy in the Workplace Act to prohibit public and private sector employers from requesting, requiring, or demanding access to employees' or applicants' social network accounts or profiles. The new law still permits employers to regulate and monitor the use of company-provided electronic equipment. Before the new law takes effect on January 1, 2013, employers should carefully consider whether their current social media policies adequately address the use of technology and workplace privacy.

Background

With the explosion of social media in the past few years, many employers have begun to use some form of social media as a recruitment tool, to screen job applicants, and to investigate employee conduct and complaints. As online searches become more commonplace, there is growing concern at both the state and federal levels over protecting individual privacy rights and employee free speech in and about the workplace. Social media has become an increasingly hot topic for employers, lawmakers, and the National Labor Relations Board. (See our July 13, 2012 [For Your Information](#).)

Earlier this year, Maryland became the first state to enact a [law](#) generally prohibiting employers from requesting or requiring employees or job applicants to provide access to their personal social media or other Web-based accounts. Maryland's law takes effect on October 1, 2012, and nearly a dozen other states (including California and New York) are considering social media legislation. At the federal level, two bills recently were introduced that would make it unlawful for an employer to request or require employees or applicants to provide access information for a private email or personal social networking account ([H.R. 5050](#)), or for a personal computer ([S. 3074](#)).

The Illinois [Right to Privacy in the Workplace Act](#) (Privacy Act) currently bars employers from asking prospective employees (or their employers) about claims for benefits filed or benefits received under the Illinois Workers' Compensation Act or Workers' Occupational Diseases Act. On August 1, 2012, Illinois Governor Pat Quinn signed House Bill [3782](#) into law, amending the Privacy Act to address social media issues.

New Privacy Protections

Effective January 1, 2013, the Illinois Privacy Act will provide new privacy protections for employees' and job applicants' social networking account information, making it unlawful for any employer to:

- Request or require any current or prospective employee to provide passwords or related account information to gain access to that individual's account or profile on a social networking website
- Demand access in any manner to a current or prospective employee's account or profile on a social networking website.

For these purposes, "social networking website" means "an Internet-based service that allows individuals to: (A) construct a public or semi-public profile within a bounded system, created by the service; (B) create a list of other users with whom they share a connection within the system; and (C) view and navigate their list of connections and those made by others within the system." Notably, the law's definition of social networking website does not include email.

Unlike Maryland's law, which contains an exception for certain work-related investigations, the Illinois law provides a blanket prohibition against seeking access to an employee's or applicant's social media information. For that reason, Illinois employers are more likely to experience difficulty in fully investigating claims of employee misconduct (such as harassment), breaches of securities and financial laws, and regulatory compliance issues.

Importantly, the Illinois law preserves the employer's right to maintain policies regulating the use and monitoring the usage of its own electronic equipment. Thus, policies restricting Internet use, social networking site use, and email use on employer equipment are not affected. As long as employers comply with other applicable laws, they may continue to obtain information about applicants or employees that is in the public domain (including information on social networking sites that is not restricted by privacy settings).

INSIGHT

Because privacy laws differ from state to state, multi-state employers in particular can expect some difficulty in developing effective social media policies for universal application.

Conclusion

Employers' use of social media is the subject of much attention and increasing scrutiny by lawmakers and the media. Two states have now passed laws aimed at protecting social networking privacy in the employment context, and many other states are considering similar restrictions on employer conduct. Given this national trend, employers that have not already done so should carefully craft rules governing their use and their employees' use of social media in the workplace.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.
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