

# EMPLOYMENT LAW ALERT

May 2012

## Reminder!

### *Navigating the Wage & Hour Minefield*

An RMF "Best Practices" Roundtable Seminar  
**with a Special Distinguished Guest Speaker  
from the U.S. Department of Labor**

**Wednesday May 23, 2012**

**8:00 - 10:00 a.m.**

at the offices of Ruskin Moscou Faltischek, P.C.  
RXR Plaza, Uniondale

### Ruskin Moscou Faltischek's Employment Law Capabilities

- Sexual Harassment Prevention
- Discrimination Avoidance
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- Protection of Trade Secrets, Proprietary Information and Business Opportunities
- Employment At Will, Breach of Contract and Termination for Cause
- Employee Policy Manuals
- Family and Medical Leave
- Wage and Hour Requirements
- Employee vs. Independent Contractor
- Executive Employment Agreements and Severance Packages
- Comprehensive Litigation Services

### **Update: New Federal Legislation Proposed Banning Request for Personal Passwords**

By: Jeffrey M. Schlossberg



Since we issued last month's [Employment Alert](#) informing you that Maryland was the first state to pass a law prohibiting employers from asking for password information, two bills were introduced in Congress addressing the same concerns. In late April, Rep. Elliot Engel introduced the Social Networking Online Protection Act. The bill would prohibit employers from requiring or requesting that employees provide a user name, password, or other means for accessing a personal account on any social networking website.

In addition, last week a group of Democrats (including Sen. Charles Schumer) introduced in the House and Senate the Password Protection Act. This law would also prevent employers from accessing information on any computer that it does not own or control, including private e-mail accounts and smartphones. The act:

For further information, please contact these  
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[April 2012](#)  
[March 2012](#)  
[February 2012](#)  
[January 2012](#)  
[December 2011](#)  
[November 2011](#)

Follow us on 

- Prohibits an employer from forcing prospective or current employees to provide access to their own private account as a condition of employment.
- Prohibits employers from discriminating or retaliating against a prospective or current employee because that employee refuses to provide access to a password-protected account.

It appears this trend of legislators attempting to prohibit employer access to personal information is only just beginning. Stay tuned.

## **EEOC Updates Guidance on Use of Arrest and Conviction Records**

The Equal Employment Opportunity Commission has issued revised guidance on employer use of arrest and conviction records as part of the hiring process. Title VII of the Civil Rights Act of 1964 does not specifically prohibit an employer from obtaining this information. However, the EEOC believes that the request for such information may violate Title VII in two ways: where an employer treats arrest and conviction information differently based on an applicant's race or national origin and where a neutral policy of excluding applicants with a criminal history disproportionately impacts those of African American and/or Hispanic descent.

As part of the guidance, the EEOC offers examples of best practices for employers. Some of the practices are:

- Eliminate policies or practices that exclude people from employment based on any criminal record.
- Develop a narrowly tailored written policy and procedure for screening applicants and employees for criminal conduct.
- Identify essential job requirements and the actual circumstances under which the jobs are performed.
- Determine the specific offenses that may demonstrate unfitness for performing such jobs.
- Record the justification for the policy and procedures.

Notably, New York State already has in place laws and regulations, which if followed, would likely keep employers out of harm's way under the EEOC Guidance.

If we can be of assistance on these or any employment law issues, please do not hesitate to contact us.

  
RUSKIN MOSCOU FALTISCHEK P.C.

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