

New Jersey Joins Growing List of States Prohibiting Employers from Demanding Social Media Passwords

By Larry Besnoff on October 9, 2013



Governor Chris Christie recently signed new legislation that places New Jersey on a growing list of states that prohibit private employers from requesting or requiring current or prospective employees to disclose their usernames, passwords, or any other access information for any “personal account” on a social media site, such as Twitter and Facebook. To date, eleven other states prohibit private employers from asking for access to an employee’s or applicant’s personal social media accounts. These states include Arkansas, California, Colorado, Illinois, Maryland, Michigan, Nevada, New Mexico, Oregon, Utah, and Washington.

Effective December 1, 2013, New Jersey law will prohibit employers from retaliating or discriminating against an employee or applicant who engages in any of the following activities:

- Refusing to provide access to his/her personal social media account;
- Reporting an alleged violation of this Act to the Commissioner of Labor and Workforce Development;
- Participating in any investigation, proceeding or action concerning a violation of the Act; or
- Otherwise opposing a violation of the Act.

If an employer violates the Act, an employee or applicant can file a civil lawsuit within one year of the date of the alleged violation. Available remedies include injunctive relief, compensatory and consequential damages, reasonable attorneys’ fees and costs, and civil penalties of \$1,000 to \$2,500.

Of particular note, there are certain limited situations wherein an employer may lawfully obtain an employee’s personal login and password to a social media site. Specifically, the Act does not apply to the following scenarios:

- An employer is investigating an employee’s work-related misconduct and receives specific information about activity on the employee’s personal social media account related to the misconduct (*i.e.*, an investigation of a sexual harassment complaint wherein the alleged harasser is using social media as the medium for the harassment);

- An employee creates, maintains, uses or accesses a social media account for business purposes or business related communications of the employer (*i.e.*, a LinkedIn page that an employee uses to advertise the employer's business);
- The employer can obtain the information in the public domain.

Employers with operations in New Jersey should revise hiring practices (such as candidate screening procedures) and social media policies to ensure compliance with the Act.

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