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Calif. Advances Bill Guarding Workers' Social Media Logins

By **Erin Coe**

Law360, San Diego (April 25, 2012, 8:43 PM ET) -- California on Wednesday moved a step closer to banning employers from demanding access to workers' and job applicants' Facebook, Twitter and other social media accounts after a bill breezed through another state Senate panel.

The Senate Labor and Industrial Relations Committee voted 5-0 for S.B. 1349 by Sen. Leland Yee, D-San Francisco, that seeks to prohibit companies from formally requesting or requiring employees and job candidates to disclose their social media usernames and passwords, following unanimous approval of the measure by the Senate Education Committee last week.

The legislation, which would also block colleges and universities from requiring the information from students, now proceeds to the Senate Appropriations Committee.

As many individuals post private and personal information on social media sites for their friends and family to see, requests by employers and college admissions officials to access these accounts as part of hiring and admissions decisions create problems, Yee said at the hearing Wednesday.

"Something you thought was closed to the general public is now open," he said. "This bill would prevent that from happening."

CalSmallBiz, the California Employment Lawyers Association and the American Federation of State, County and Municipal Employees were some of the groups that showed their support, saying that requiring access to social media sites could expose employers to individuals' religious beliefs, sexual preferences, medical conditions and other protected categories under the California Fair Employment and Housing Act, and that the bill helps companies avoid potential liability. No organizations opposed the measure.

The bill comes in response to the increase in requests by companies, public agencies and colleges across the country for workers', job seekers' and students' account information on Facebook and Twitter.

"Today was another step forward in ending this unacceptable invasion of personal privacy," said Yee in a statement following the bill's passage. "The practice of employers or colleges demanding social media passwords is entirely unnecessary and completely unrelated to someone's performance or abilities."

While the bill protects individuals' privacy rights, it also gives employers a clear roadmap to avoid potential pitfalls that come along with the practice of requiring the disclosure of

passwords to social media accounts, according to Matthew Cebrian, a director of Murphy Pearson Bradley & Feeney PC.

"The bill helps employers from making a mistake that could end in expensive litigation," he said. "An employer may want to make sure the company is protected from making a bad hiring choice, but the problem with that is even if it means well, it could be handing an opportunity to a litigious applicant."

If a company decides not to hire a job applicant after going on one's Facebook account, which included messages revealing that the applicant is trying to get pregnant, the applicant may bring a lawsuit claiming she was not hired because of that information, Cebrian said.

"The reason a company chose not to hire the applicant could have nothing to do with that information — and it may not have even looked at that — but because the company demanded access to the information, knowledge of what was contained in the messages could be imputed to them, and then the company is already behind the eight ball," he said.

Donald Schroeder, a member of Mintz Levin Cohn Ferris Glovsky and Popeo PC's employment group, questioned whether legislation was really needed to keep employers from asking for social media site passwords from workers and job applicants.

"This is more of a common sense issue, and market forces will likely dictate the right behavior so that employers refrain from asking for this information," he said. "Certainly, if employees post something public on a Facebook page, that's fair game. But to the extent they keep information private for a reason, I don't see why an employer needs to know that."

Employers may want to access this information to see whether an applicant shows signs of poor judgment or immaturity, such as having pictures on Facebook of being heavily intoxicated or wearing inappropriate clothing, but demanding social media site passwords opens a Pandora's box of potential problems, he said.

"An employer may learn way too much information that has no bearing on whether individuals are qualified job candidates," he said. "And if it doesn't hire them, they may assume the company made certain judgments based on reviewing their Facebook and Twitter accounts. Why go down that road in the first place?"

Instead of formally asking for passwords and usernames, some employers have demanded that applicants and employees talk with managers to review their social media content or print out their social media pages. These practices would also be barred by Yee's bill.

In addition, requests for personal email addresses and login information would be prohibited under the measure.

A related bill, A.B. 1844, sponsored by Assemblywoman Nora Campos, D-San Jose, affirms that an employer can't require applicants to disclose their passwords for social media or social networking sites. It passed out of the Assembly Judiciary Committee on a 10-0 vote on Tuesday.

Because there is ambiguity over whether an employer should explore all available sites when conducting a background check, the bill also seeks to clarify that an employer has no affirmative duty to investigate these sites regarding applicants or current employees.

--Editing by Katherine Rautenberg.

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