



New Jersey Enacts Job Protection Social Media Law

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On August 29, 2013, Governor Chris Christie signed into law Assembly Bill A2878, after conditionally vetoing the bill the first time it crossed his desk. The Act prohibits employers from requiring or requesting applicants or employees to provide or disclose any user name or password, or in any way provide the employer access to, a personal social media account or service through an electronic communications device. The revised Act protects employees from perceived “Big Brother” tactics by employers, while still allowing employers to investigate alleged work-related misconduct and violations of law, evidence of which may manifest itself on social media.

The new law goes into effect this year, on December 1st. A companion bill (A2879) was signed into law in December 2012, barring colleges and universities from seeking the same information from applicants and current students.

Scope of Coverage

The Act defines “employer” as an employer or employer’s agent, representative or designee in New Jersey. Notably, state and local law enforcement agencies are exempt from abiding by this new law.

The Act defines “personal account” as any account, service or profile on a social networking website that is used by a current or prospective employee exclusively for personal communication, unrelated to any business purposes of the employer. It is important to note that this definition does not apply to any account which was created, maintained, used or accessed by the individual for business purposes of the employer, or to engage in business communications. For example, if an employee is asked to create a LinkedIn profile as a networking tool for their employer, the employer will have the right to the user name and password for that account.

The term “electronic communications device” means any device that uses electronic signals to create, transmit, and receive information. Examples of such devices include a computer, cellular phone, or personal digital assistant such as iPad or other similar device. According to the law, “social networking website” means any Internet-based service, such as Facebook, that allows individuals to create a public or semi-public profile within the system created by the service, including any service where the individual creating the profile has the ability to choose with whom to share the connection and information contained on the profile.



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Key Provisions for Employers

Employers must not:

- Require or request a current or prospective employee to provide or disclose any user name or password, or in any way provide the employer access to, a personal account for service through an electronic communication device;
- Require an individual waive or limit any protection granted under this act as a condition of applying for or receiving an offer of employment.
- Retaliate or discriminate against an individual because the individual has done or was about to do the following:
 - Refuse to provide or disclose any user name or password, or in any way provide access to, a personal account, like Facebook, Twitter, LinkedIn, Pinterest;
 - Report an alleged violation of this act to the Commissioner of Labor and Workforce Development;
 - Testify, assist, or participate in any investigation, proceeding, or action concerning a violation of this act; or
 - Oppose a violation of this act.

Job Applicant and Employee Protections

Employees or prospective employees may bring civil actions within one year from the date of the alleged violation (failure to hire, failure to promote, or termination by an employer who seeks information about an applicant or employee's social media accounts). Aggrieved prospective job applicants or employees may file civil suits seeking: (1) injunctive relief; (2) compensatory and consequential damages incurred by their prospective employees or employee; and (3) reasonable attorneys' fees and court costs.

Penalties for Violations of the Law

In addition to potential civil actions, employers who violate any provision of the Act shall be subject to civil penalties in an amount not to exceed \$1,000 for first violation, and



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\$2,500 for each subsequent violation. Penalties will be collected by the State Department of Labor's Commissioner of Labor and Workforce Development.

Notable Exemptions

Employers may implement and enforce policies pertaining to the use of an employer-issued electronic communication device (e.g. a "work phone") or any accounts provided by the employer or a device or account used by an employee for business purposes (e.g. a company Twitter account). In addition, employers may conduct investigations for the purpose of ensuring compliance with a law or alleged work-related misconduct upon receipt of specific information about activity on a personal account by an employee, and employers may view and access information about a current or prospective employee that is made public.

To ensure compliance with this new law, employers should seek the advice and guidance of experienced legal counsel in creating or revising their Use of Electronic Devices and Social Media policies for their workplace.

For more information on A2878 or human resource practices and policies in general, please contact [Dena B. Calo, Esq.](mailto:dcalo@genovaburns.com) Director of the [Human Resources Practice Group](#) and Partner of the [Employment Law & Litigation](#) Group at dcalo@genovaburns.com, or [Eileen Fitzgerald Addison, Esq.](mailto:eaddison@genovaburns.com), Associate with the Employment Law & Litigation Group at eaddison@genovaburns.com.