

Maryland to Ban Employers from Asking Employees, Applicants for Social Media Passwords

April 10, 2012

Under a bill passed by both houses of the Maryland General Assembly, employers in Maryland would be prohibited from demanding from employees and job applicants the usernames, passwords or other means to access personal accounts or services through an electronic communication device (e.g., computer and phone) for social media sites such as Facebook and LinkedIn. The bill, [S.B. 433](#), introduced by Senator Ronald Young, passed unanimously in the Senate and by a vote of 128-10 in the House. It is awaiting the signature of Governor Martin O'Malley. It would become effective October 1, 2012.

Similar bans are under consideration in other states, including California, Illinois, Minnesota, Michigan, and Washington. Employers doing business in multiple states should monitor developments nationwide. No bill has yet been introduced at the federal level, but two U.S. Senators have asked the Department of Justice and the Equal Employment Opportunity Commission to investigate the practice by employers of asking employees and applicants for personal social media account access information.

Under Maryland's S.B. 433, "employer" means:

1. a person engaged in a business, an industry, a profession, a trade, or other enterprise in the state;
or
2. a unit of state or local government.

"Employer" includes "an agent, a representative, and a designee of the employer." Thus, an employer cannot engage a third party to do what the employer cannot do directly.

Covered employers also "may not discharge, discipline or otherwise penalize or threaten to discharge, discipline, or otherwise penalize" an employee or applicant for refusing to disclose any information covered by the law. Further, employers "may not fail or refuse to hire" any applicant because he or she refused to disclose any covered information.

The Maryland law would prohibit an employer from making unauthorized downloads of "employer proprietary information or financial data to an employee's personal web site, an internet web site, a web-based account, or a similar account." However, based on receipt of information of unauthorized downloading, an employer is not prevented from investigating an employee's actions.

Finally, an employer is not prevented from conducting an investigation based on the receipt of information about an employee's use of a personal web or similar account for business purposes to ensure compliance with applicable securities or financial law or regulatory requirements.

Should S.B. 433 become effective, an adverse employment action, such as the termination of an employee, likely will give rise to a tort claim as an action in violation of public policy. This, in turn, would involve the potential for punitive damages.

In addition, all issues involving social media presently are receiving intense scrutiny from the National Labor Relations Board. Employers should consider whether any demand for access to an employee's social media sites might be seen to interfere with rights of the employee protected under the National Labor Relations Act.

Jackson Lewis attorneys are available to answer inquiries regarding workplace developments.

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