

Nebraska Legislature Considers Sexual Orientation Protection and Social Media Access Bills

By Kenneth M. Wentz

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Two recent bills introduced in the current session of Nebraska's Unicameral Legislature would affect employers in Nebraska by imposing additional obligations on them to employees and applicants.

The first, LB 58, the Workplace Privacy Act, would bar employers from requiring employees and job applicants to provide access to their personal social media accounts. Employer attempts to require employees and applicants to provide such access was often in the news in 2012. Some states, including Illinois and Michigan, passed laws protecting that information from mandatory disclosure. Nebraska is set to join those states.

As proposed, the Workplace Privacy Act prohibits employers from requiring an employee or applicant to log into their social media accounts, such as Facebook, while in the employer's presence. The bill also prohibits employers from accessing the individual's social media account through a "friend" or social networking contact of the employee or applicant.

The bill also bars employers from conditioning employment on the employee's or applicant's waiver of the protections in the bill or providing written consent for such access. In addition, the bill prohibits employers from retaliating against any individual who refuses to provide social media access, files a complaint alleging a violation, or participates in an investigation relating to an alleged violation. In the event of an employer violation, an employee or applicant may bring a civil lawsuit within one year, and, if the employee or applicant prevails, the court would have the discretion to award attorney's fees and costs.

The second bill, LB 485, would prohibit employers from considering the sexual orientation or marital status of employees and job applicants. On the heels of similar city ordinances in Lincoln and Omaha, the bill would ban discrimination in the workplace based on sexual orientation or marital status. The bill allows an exception for religious institutions. This is not the first time a bill of this nature has been contemplated by the legislature. In 2007, a similar bill was introduced but never made it past the first reading. However, with the recent city ordinances, proponents believe they have the traction to pass the bill this session.

As with any proposed laws affecting your business, we will keep you updated and are prepared to answer any questions.

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