

Employee Social Media Privacy

May 24, 2012

This month, Maryland's governor signed the country's first law prohibiting employers from either requesting or requiring that an applicant or employee disclose a user name or password to personal social media sites to the employer.

The law also prevents employers from taking action against applicants or employees who refuse to disclose such information. Exceptions are limited to employers conducting investigations regarding securities or financial law and regulations and unauthorized downloading of the employer's proprietary information or financial data.

The federal government and a number of states, including Michigan, are considering legislation that would place similar limits on an employer's ability to gain access to applicant and employee social media sites. Congressman Eliot Engel of New York sponsored HR 5050, the "Social Networking Online Protection Act," to prohibit schools and businesses from requesting user names, passwords, or other means of accessing a personal account on any social networking website. HB 5523, the bill currently pending before the Michigan House, would similarly prohibit both employers and educational institutions from requesting access to the social networking accounts of applicants, employees, students, and prospective students.

Facebook's official position is that requiring login and password disclosure could not only "potentially expose the employer who seeks . . . access to unanticipated legal liability," it also is "a violation of Facebook's Statement of Rights and Responsibilities to share or solicit a Facebook password."

As more states jump on the legislative bandwagon, employers should proceed with caution before continuing or implementing a policy that requires applicants or employees to provide access to their personal social media sites as a term and condition of employment. Careful consideration must be given to all of the related business and legal issues.