



Laws Try to Resolve Employer-Employee Social Media Conflicts

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Howard Mavity was quoted in *The Wall Street Journal* on May 28, 2015. The article "Laws Try to Resolve Employer-Employee Social Media Conflicts" discussed how this month Connecticut became the 21 state to enact a social media privacy law, and the absence of an overriding federal law means companies with employees in multiple states have to stay abreast of what changes are being made where, and how they impact individual offices and operations.

While the laws have similarities--they all broadly define social media, prohibit employers from asking employees or prospective employees for their social media passwords and include exceptions where employers can gain access to social media accounts--the differences between them require vigilance, said Howard.

"There's model legislation that to some extent has been followed, so most of these laws are similar but they are not alike," said Howard. "So if you are a multistate employer there are 20-something laws now that have passed and all differ somewhat."

Most important for companies is to know under what circumstances they are allowed to access employee social media accounts--for example if the employee is suspected of stealing company trade secrets, said Howard. "Where this happens is with trade secret action. A company can get a temporary restraining order to compel access to it," he said. "Pretty much every law I looked at has some language that it would be OK to demand passwords in those situations."

Howard said he doesn't think employers are prying into employee actions on social media as much as the news media suggest. One reason is employers can check with coworkers to see what is going on with an employee. Also, many employees set their social media settings to public, which gives the company access to their statements without need of a password.

"You can Google so many articles in human resources journals about how employers are using social media to check out prospective candidates, but I don't think it's occurring as much as people think--and that is one reason we are not seeing so many legal issues," said Howard.

Still, companies are revising their policies, especially since many attorneys previously had advised them to establish strict rules that made it clear the company had the right to access emails, phones and voice messaging systems, said Howard. "A lot of times employers put draconian statements in without any intention of using them," he said. "They just didn't want the employee to think they had

without any intention of using them," he said. "They just didn't want the employee to think they had an expectation of privacy. So now they have to go back and clean up a lot of those provisions because they may conflict with these various laws."

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