



Bill Blocks Employer 'Access' To Employees' Social Networking Accounts

Publication

7.02.12

Recently, the Illinois legislature passed House Bill 3782, which amended the Illinois Right to Privacy in the Workplace Act. The bill aims to prevent employers from asking job applicants or employees for access to their personal social networking accounts.

Introduced by state Rep. La Shawn K. Ford, D-Chicago, the bill was drafted in response to concerns that a handful of employers, primarily in the government and financial services sectors, were seeking social network account passwords from job applicants. The issue has attracted national attention at the state and federal level.

College graduates have long been warned that posting inappropriate photographs or comments on social networking sites might impede their ability to find employment. Some employers weed out these individuals rather than risk similar behavior surfacing in the workplace. On the other hand, background checks involving social networks raise risks too. Employers may stumble across information that cannot be considered during the hiring process under federal, state or local anti-discrimination laws. Thus, reviewing the content of social networking accounts has been somewhat of a catch-22 for employers.

If signed into law by Gov. Patrick J. Quinn, the bill will not only prohibit Illinois employers from requiring that job applicants disclose personal social media passwords during the hiring process, it will prevent employers from asking current employees for such passwords or from demanding access to personal accounts of current employees. Employers should be particularly wary of the portion of HB 3782 that prohibits employers from demanding "access in any manner to an employee's or prospective employee's account or profile on a social networking website." This restriction does not include exceptions for scenarios in which the employer could be found liable for statements or conduct of its employees on social networking websites.

Employers have numerous legitimate reasons to be concerned about what employees post on social networking websites. If Quinn signs HB 3782 in its present form, Illinois employers will need to consider carefully how their employees are using social networking sites, as the bill essentially treats employer requests for access to these sites as gratuitous snooping.

Employers may wish to remind employees of their policies on acceptable Internet conduct and inform employees of employer policies relating to employer monitoring of employer-provided equipment and Internet access. Illinois employers should also recognize that the bill's prohibition against demanding "access in any manner" to an employee's online profile may need to be clarified by the courts.

This article appeared in the July 2, 2012 issue of the *Chicago Daily Law Bulletin*.