



Social Media Legislation – Employers Beware of the Ongoing Movement to Protect Employees and Potential New Hires

Insights

5.07.14

Over the past couple of months there has been a flurry of legislative activity at the state level concerning an employer's ability to access the social media accounts of potential or current employees. Legislation introduced in Connecticut, for example, (1) precludes employers from requiring potential or current employees to disclose the login information for their social media pages, (2) bars employers from asking potential or current employees to access a social media page "in the presence of [the] employer," and (3) generally prohibits employers from taking adverse action in response to a potential or current employee who refuses to provide the login information for their social media pages or access such pages in front of the employer. The Connecticut legislation also contains a number of enforcement mechanisms including civil fines, rehiring or reinstating an employee, and an award of attorney's fees and costs if the state's labor commission, in response to a complaint, finds the employer violated the statute. On a macro level, legislation on this issue has been introduced in 28 states, while Wisconsin, to date, is the only state to have enacted this type of legislation into law. The Social Networking Online Protection Act was also introduced in Congress in 2013, but few expect the bill to even get out of committee let alone be enacted into law.

The common thread among the various pieces of legislation introduced is prohibiting employers from requiring potential or current employees to provide the login information for their social media pages such as Facebook, Instagram and Twitter. The privacy settings on many, if not all, social media sites allow users through a couple clicks of the mouse to limit and block the public's access to the pictures, posts and other information shared through social media. In response to the growing availability and use of these types of privacy settings, employers, in some instances, have resorted to requiring current employees or potential new hires to disclose the login information for their social media pages. The login information, of course, enables employers to view any and everything on a particular social media page despite the privacy settings that are being used. Privacy advocates and many in the general public cried afoul to the practice of employers aggressively seeking access to non-public portions of social media pages, leading to the introduction and push for legislation at the federal, state and local level.

For employers, the end result is an evolving legislative arena they must carefully monitor over the coming months and years. While so far only one state, Wisconsin, has approved legislation curtailing an employer's access to social media pages, similar pieces of legislation are in the pipeline in a number of states. With the ever increasing use and importance of social media in this digital age,

employers should anticipate continual legislative activity focused on social media in both the short and long term. In light of this reality, employers may want to consider getting ahead of the curve by, for example, carefully reviewing their employment policies and hiring practices relating to social media to ensure they comply with the current law. An employer choosing to ignore the legislative trend towards protecting current or potential employees' social media pages could inadvertently find itself on the wrong side of a newly enacted law at the state or local level.