

Facebook, Twitter, Instagram...Oh My! What Wisconsin Employers Need to Know Before Requesting Access to an Employee's Social Media Account...

Labor & Employment Law Update

on April 17, 2014

On Tuesday, April 8, 2014, Scott Walker, Governor of Wisconsin, signed into law the "Wisconsin Social Media Protection Act." The act went into effect on April 10, 2014, and places restrictions on the types of information that Wisconsin employers can and cannot seek from employees and/or job applicants regarding their personal social media accounts.

The act prohibits employers from requesting an employee or applicant to grant access to their personal internet account (i.e., internet based accounts created and used by an individual exclusively for personal communications, such as Twitter, Facebook, etc.) and likewise prohibits employers from requesting an employee or applicant to disclose information that would allow access or observation of their personal account. The term "access information" means requesting an employee or applicant's user name and password, login information, or any other security information that protects access to a personal internet account.

Employers are prohibited from discharging, refusing to hire, or otherwise discriminating against any person who refuses its request to grant access to a personal internet account, for opposing such proscribed practices, or for filing a complaint relating to an improper request. The act provides for the imposition of a \$1,000 penalty, in addition to other remedies, for noncompliance.

Right about now you are probably asking yourself – does this act apply to me? The answer is almost certainly, YES! The act broadly defines an "employer" as "any person engaging in any activity, enterprise, or business employing at least one individual," and specifically includes the state and its political subdivisions. Additionally, the act places similar prohibitions on requests to access of personal Internet accounts by landlords with respect to tenants and prospective tenants and by educational institutions with regard to students and prospective students.

There are several key exceptions in the act, including, among others, that employers may still review information that is publicly available or that can be found in the public domain (i.e., Google). Notably, the act also authorizes employers to continue to conduct investigations, with reasonable cause, relating to the unauthorized transfer of company proprietary, financial, or confidential information or of any other alleged employment-related misconduct. The act further permits employers to require disclosure of access information in order to gain access or to operate an electronic communication device supplied or paid for in whole or in part by the company.

Bottom Line: Wisconsin is the latest state to pass legislation in recognition of the evolving need to update privacy laws to reflect the increased use of social media. Employers should evaluate and update all policies and practices relating to use of electronic communications and devices, internet usage, social media, and even hiring practices to ensure compliance with the act. As with any new law, stay tuned for the latest developments on how this act is enforced and litigated.

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