

One Minute Memo®



Maryland First State To Ban Employers from Asking for Social Media Passwords

Maryland will become the first state to ban employers from requiring employees and applicants to disclose the passwords to their personal social media accounts. A pair of identical bills prohibiting the practice, S.B. 433 and H.B. 964, have been passed by the General Assembly and are now headed to Governor Martin O'Malley, who is expected to sign the legislation into law.

The Maryland legislation, which will take effect October 1, 2012, provides that employers, including their agents, representatives, and designees, are prohibited from requesting or requiring that applicants or employees "disclose any user name, password, or other means for accessing a personal account or service" electronically. Employers may not fail or refuse to hire an applicant for not providing access to personal accounts, nor may employers discipline, discharge, or threaten to discipline or discharge an employee who refuses employer access to personal accounts.

The legislation contains some protections for employers as well: It prohibits employees from downloading "unauthorized employer proprietary information or financial data" to personal accounts or to personal or public websites, and allows employers to investigate alleged violations of that prohibition if they receive information indicating that such unauthorized activity has occurred. Employers who receive information indicating that an employee is using personal accounts or personal or public websites for "business purposes" are permitted to conduct an investigation "for the purpose of ensuring compliance with applicable securities or financial law or regulatory requirements." The legislation also makes clear that employers may require employees to provide access to non-personal accounts that are part of the employer's information systems, which would include company email accounts. However, the legislation does not offer guidance regarding an employer's "agent" or "representative." This may pose concerns and risks for employers when conducting investigations and when in litigation with current employees.

In the wake of recent news stories regarding the practice by some employers of requiring that applicants disclose Facebook passwords, that applicants and employees "friend" hiring managers or human resources professionals, or that applicants log in to social media accounts during interviews, lawmakers in other states, including Illinois and California, have introduced legislation prohibiting the practice. Conversely, the U.S. House of Representatives recently rejected an amendment, proposed by Representative Ed Perlmutter of Colorado, that would give the Federal Communications Commission the power to stop telecommunications employers from asking job applicants for access to their social media accounts, but Senator Richard Blumenthal of Connecticut has announced his intent to introduce federal legislation barring the practice by all employers.

Some laud the Maryland law as a further necessary step in furtherance of individual privacy, while others may consider it a solution in search of a problem. Whatever the case, it imposes restrictions on employers that will need to be followed and is not likely the last word on the issue of social media for Maryland employers.

By: *Virginia E. Robinson*

Virginia E. Robinson is an associate in Seyfarth's D.C. office. If you would like further information, please contact your Seyfarth attorney or Virginia E. Robinson at verobinson@seyfarth.com.