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## Another Wave of Social Media Laws: Five Ways for Employers to Stay Ahead of Trend

Stradley Ronon recently reported on the emerging legal trend of restricting employer access to employee and applicant social media sites (*see Employment NewsFlash, July 2012*). California, Maryland, Michigan and Illinois already have laws restricting employer social media access, and Delaware and New Jersey have laws restricting access by academic institutions. Since we last reported, additional legislation has been introduced or is pending in at least 28 states, including Pennsylvania and New Jersey, to restrict employer access. Local governments are also joining the movement. For example, last week a bill was introduced in Philadelphia to impose a similar ban.

Most of the enacted or proposed laws prohibit employers from requesting or requiring an employee or applicant to provide usernames or passwords for personal accounts or profiles on social networking sites. They also often prohibit any retaliation resulting from the employee's refusal to disclose requested social media information.

As currently proposed, New Jersey's pending law is generally considered one of the harshest. It not only prohibits requesting usernames and passwords, but also prohibits employers from even requesting that an employee disclose the existence of a social media account. The legislation also provides that any agreement to waive this protection would be void as a matter of law and imposes civil monetary penalties.

Given this legal trend and the various nuances of each jurisdiction's laws, many employers have been left in the dark about what they can and cannot request. To stay ahead of this emerging trend, employers should consider the following actions:

- For more business-focused sites such as LinkedIn, offer company-sponsored accounts for employee use, where the company retains the username and password, makes clear that the account is business-related and not personal, and advises the employee at the outset that the company will retain ownership of the account upon separation from employment. Offering a company-sponsored account may deter employees from creating a personal account that would be more likely to be protected by the new social media laws.
- In social media policies, address access to personal accounts on personal time separately and with fewer restrictions than activity on employer-sponsored accounts or using employer communication devices. Consult with appropriate human resources personnel or legal counsel to ensure such restrictions are still compliant with law.

- Include a clear disclaimer in employee handbooks and policies, and at each computer login, which requires employees to acknowledge that any activity on the company’s computers and other communication systems is not private, belongs to the company and may be subject to inspection. Before actually accessing such information, however, consult with appropriate human resources personnel or legal counsel regarding parameters for review and use in disciplinary action.
- Review the enacted and pending state and local laws particular to the jurisdiction in which your business operates. A summary of the status of such laws is available at

<http://www.ncsl.org/issues-research/telecom/employer-access-to-social-media-passwords-2013.aspx>.

- If your business requests personal social media account access as part of its hiring or employment process, review that practice in light of recent laws and the company’s business justification for requiring such access.

Social media protection acts are popping up faster than employers can address them. Regular review of social media policies should occur, and consultation with the appropriate human resources personnel or legal counsel may be necessary to ensure legal compliance.

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