

Publications

New York Restricts Employer Access to Employee and Applicant Social Media Accounts

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Effective March 2024, New York will become the latest jurisdiction to restrict an employer's ability access to employee and applicant social media accounts. Assembly Bill 836 (A.836) places new restrictions on employers that wish to access current and prospective employee social media accounts. It also provides a number of exceptions for employers.

What are the restrictions?

The new law prohibits employers from requesting, requiring, or coercing employees or applicants to (1) disclose their username, password, or other login information for their personal accounts; (2) access their personal accounts in the employer's presence; or (3) reproduce photos, videos, or other information contained in their personal accounts through means prohibited by the law. "Employer" is defined broadly to include any persons or entities engaged in business in New York State, including their agents, representatives, and designees. A "personal account" refers to an account used exclusively for personal purposes.

The law prohibits an employer from discharging, disciplining, or otherwise penalizing or threatening to penalize an employee for refusing to disclose information covered by the law. Similarly, an employer is prohibited from refusing to hire an applicant as a result of their refusal to disclose such information.

What are the exceptions?

The law does not apply: (1) to accounts provided by the employer to be used for business purposes, if the employee was informed of the employer's right to require access; (2) to accounts known to the employer that is used for business purposes; (3) to devices the employer provides or pays for where provision or payment was conditioned on the employer's right to access, the employee was so notified, and the employee "explicitly agreed" to such conditions; or (4) when the employer is otherwise complying with certain regulatory requirements or a court order. It also does not prohibit an employer

from restricting or prohibiting an employee's access to certain websites while using the employer's network or while using a device provided or paid for by the employer where that provision or payment was conditioned on the right to restrict access, the employee was so notified, and the employee "explicitly agreed" to such conditions. Employers may also require an employee to disclose any login information for non-personal accounts that provide access to the employer's internal information systems.

Key takeaways

While A.836 does restrict an employer's ability to request access an employee or applicant's social media accounts, employers are still permitted to view, access, or utilize information about an employee or applicant that is publicly available. Similarly, employers may access or utilize information that is voluntarily shared with the employer or for the purposes of obtaining reports of misconduct or investigating misconduct.

New York is the latest of over 25 states to enact laws that restrict an employer's access to employee and applicant social media accounts. Employers that operate in New York should review their policies regarding employee social media accounts to ensure compliance with these new requirements. Contact your Vorys lawyer if you have questions.