

Eye On Compliance: Employee Social Media Privacy In NY

By **Madjeen Garcon-Bonneau** (March 27, 2024)

This article is part of a monthly column that provides guidance on employers' top compliance concerns. In this installment, we discuss New York's new law that restricts employer access to employee and job applicant social media accounts, and explain how it affects employers and employees in the state.



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In today's digital age, social media plays a significant role in our lives, and it's not uncommon for employers to monitor employees' use of these platforms.

However, this practice has raised concerns about the balance between employees' right to privacy and the need for companies to protect their intellectual property and comply with regulations.

To address these concerns, New York Gov. Kathy Hochul signed the new law A.836 on Sept. 14, 2023, which took effect on March 12.

This law restricts employers' ability to access the personal social media accounts of employees and job applicants. It aims to protect online privacy while still allowing employers to view publicly available information.

About the Law

Preserving the privacy of employees' social media is crucial in an era where personal and professional boundaries often overlap online.

Starting on March 12, employers in New York will be prohibited from requesting or accessing the personal social media accounts of employees and job applicants. This reinforcement of privacy rights was solidified when Hochul signed A.B. 00836 and S.B. 021518A into law.

These pieces of legislation limit employers' access to the personal social media accounts of their staff, aligning New York with states such as New Jersey, Michigan, Illinois, California and Connecticut, which have enacted similar laws.

Under these new laws, employers are not permitted to:

- Request employees or applicants to divulge usernames, passwords or other access credentials for personal social media accounts;
- Demand that employees or applicants open their personal accounts in the presence of the employer; and
- Ask employees or applicants to display any photos, videos or other content from their personal accounts.

Additionally, employers are prohibited from terminating the employment of, disciplining or

taking any adverse action against anyone who refuses to provide this information or grant access to their accounts. Even threats of such actions are strictly prohibited.

The definition of a "personal account" encompasses any digital platform where users can create and share content for personal purposes. Notably, the law does not prevent employers from requesting login information for accounts used for business purposes. It also does not stop employees or applicants from voluntarily adding their employer or a recruitment agency to their list of contacts on personal online platforms.

Exemptions to the New Regulation

Workplace Probes

The law does offer an exception for employers carrying out investigations into workplace misconduct or breaches of relevant laws. In these situations, employers may seek access to an employee's personal social media accounts, but only if there are valid reasons to believe that the employee's social media activities are pertinent to the inquiry.

Business-Related Social Media

Employers who use social media accounts managed by employees to disseminate business-related information are allowed access to those accounts.

Company-Owned Communication Devices

Employers may demand access to communication devices that they pay for, provided the employee was informed in advance about the employer's right to access the device. However, accessing an employee's personal social media account through that device remains off-limits.

It's important to note that employers still are permitted to view publicly available social media information about an employee, as this does not require login credentials.

Employees still can voluntarily add employers as social media connections.

Action Steps for Employers

To stay in line with the new legislation, employers need to reassess their social media guidelines and procedures. This could mean revising existing policies, employee manuals and operational protocols.

In summary, this law marks a notable change in the way employers in New York can engage with their employees' personal social media accounts.

By understanding and following these rules, employers can safeguard their employees' privacy while still keeping necessary checks in place for business-related matters.

Consequences for Employers and Employees

It's vital for employers to grasp and adhere to these new privacy measures to prevent any legal issues. Updating and reviewing company policies related to social media use and the privacy rights of employees is key. Additionally, it's important to train managers and human resources staff to ensure they understand the legal boundaries and expectations.

Employees should be informed about their rights under the new legislation and understand that they are legally shielded from employer overreach into their private social media accounts.

However, it's crucial for employees to use social media responsibly and professionally, as certain content could still affect their job, especially if it breaches company policies or professional norms.

Final Thoughts

The introduction of privacy measures for employees' social media accounts in New York signifies an increasing awareness of the need to balance the interests of employers with the privacy and free speech rights of employees.

By setting clear boundaries and limitations on employer access to personal social media accounts, the law aims to safeguard employees from undue intrusion.

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