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# Nevada Restricts Employer Access to Social Media

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Employers who like to research an applicant's social media sites will be limited to reviewing only publically available information under a new law passed in Nevada. Effective October 1, 2013, Nevada employers may not require or request access to an employee's or applicant's personal social media account. Assembly Bill 181, recently signed into law by Governor Brian Sandoval, prohibits employers from conditioning employment on the disclosure of an individual's user name, password or other information needed to access the individual's personal electronic services and accounts. It also prohibits employers from taking, or threatening to take, any adverse action against an employee or applicant who refuses, declines or fails to disclose their social media access information.

### **Unlawful for Employers to Demand Access to Personal Social Media Accounts**

Under this new law, it is unlawful for an employer in Nevada to directly or indirectly seek the user name, password or other access information to a personal social media account from any employee or prospective employee. This prohibition means you cannot require, request, suggest or otherwise cause the individual to disclose the information necessary to access their personal account.

A social media account is defined to mean "any electronic service or account or electronic content, including, without limitation, videos, photographs, blogs, video blogs, podcasts, instant and text messages, electronic mail programs or services, online services or Internet website profiles."

Interestingly, the law does not mention access to personal social media accounts that are available for public viewing without a user name or password. Accordingly, it appears that employers are not prohibited from accessing and viewing any publically available social media accounts (though it may be risky for employers to do so for other reasons).

### **Discrimination and Adverse Actions Forbidden**

This law also makes it unlawful for a Nevada employer to discharge, discipline, discriminate against in any manner, deny employment to, or deny promotion to any employee or prospective employee who refuses, declines or fails to disclose his or her user name, password or other information needed to access his or her personal social media account. Threats to take any such action are unlawful as well.

### **Exceptions for Access to Employer Systems and for Legal**

## **Compliance**

The law allows employers to require an employee to disclose the user name, password or any other information to an account or service, other than a personal social media account, for the purpose of accessing the employer's own internal computer or information system. In addition, the law does not prevent an employer from complying with any state or federal law or with any rule of a self-regulatory organization.

## **No Specified Enforcement Mechanism**

The social media access restriction contained in Assembly Bill 181 does not specify any method by which employee or applicant allegedly harmed by a violation of the law can pursue relief. In addition, no remedies are specified in the bill. Because the bill amends Chapter 613 of the Nevada Revised Statutes on Employment Practices, a violation of the social media password protection provision conceivably could result in remedies available under that Chapter, but that conclusion is by no means clear.

## **Nevada Joins Trend, Becoming the Eleventh State to Restrict Employer Access to Social Media**

Ten other states prohibit or restrict an employer's access to social media accounts: Arkansas, California, Colorado, Illinois, Maryland, Michigan, New Mexico, Oregon, Utah and Washington. Numerous other states have proposed or are considering passage of social media password protection legislation. Employers located in or hiring in those states should review the applicable restrictions before seeking access to an individual's personal social media accounts.

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