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Riley and Lampitt

SYNOPSIS
Prohibits requirement to disclose user name, password, or other means for
accessing account or service through electronic communications device by
employers.

CURRENT VERSION OF TEXT
As amended by the Senate on October 4, 2012.

(Sponsorship Updated As Of: 3/22/2013)
AN ACT prohibiting the requirement to disclose personal information for certain electronic communications devices by employers.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. For purposes of this act:

   “Electronic communications device” means any device that uses electronic signals to create, transmit, and receive information, including a computer, telephone, personal digital assistant, or other similar device.

   “Employer” means an employer or employer’s agent, representative, or designee. The term “employer” does not include the Department of Corrections, State Parole Board, county corrections departments, or any State or local law enforcement agency.

   “Personal account” means an account, service or profile on a social networking website that is used by a current or prospective employee exclusively for personal communications unrelated to any business purposes of the employer. This definition shall not apply to any account, service or profile created, maintained, used or accessed by a current or prospective employee for business purposes of the employer or to engage in business related communications.

   “Social networking website” means an Internet-based service that allows individuals to construct a public or semi-public profile within a bounded system created by the service, create a list of other users with whom they share a connection within the system, and view and navigate their list of connections and those made by others within the system.

2. No employer shall:

   a. Require a current or prospective employee to provide or disclose any user name or password, or in any way provide the employer access to, a personal account through an electronic communication device;

   b. In any way inquire as to whether a current or prospective employee has a personal account on a social networking website.

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

1Assembly floor amendments adopted June 21, 2012.

2Senate SLA committee amendments adopted September 20, 2012.

3Senate floor amendments adopted October 4, 2012.
3. No employer shall require an individual to waive or limit any protection granted under this act as a condition of applying for or receiving an offer of employment. An agreement to waive any right or protection under this act is against the public policy of this State and is void and unenforceable.

4. No employer shall retaliate or discriminate against an individual because the individual has done or was about to do any of the following:
   a. Refuse to provide or disclose any user name or password, or in any way provide access to, a personal account through an electronic communications device;
   b. File a complaint under this act;
   c. Testify, assist, or participate in any investigation, proceeding, or action concerning a violation of this act; or
   d. Otherwise oppose a violation of this act.

5. Upon violation of any provision of this act, an aggrieved person may, in addition to any other available remedy, institute a civil action in a court of competent jurisdiction, within one year from the date of the alleged violation. In response to the action, the court may, as it deems appropriate, order or award any one or more of the following:
   a. With respect to a prospective employee:
      (1) injunctive relief;
      (2) compensatory and consequential damages incurred by the prospective employee as a result of the violation, taking into consideration any failure to hire in connection with the violation; and
      (3) reasonable attorneys’ fees and court costs.
   b. With respect to a current or former employee:
      (1) injunctive relief as it deems appropriate, including reinstatement of the employee to the same position held before the violation or the position the employee would have held but for the violation, as well as the reinstatement of full fringe benefits and seniority rights;
      (2) compensatory and consequential damages incurred by the employee or former employee as a result of the violation, including compensation for lost wages, benefits and other remuneration; and
      (3) reasonable attorneys’ fees and court costs.

6. An employer who violates any provision of this act shall be subject to a civil penalty in an amount not to exceed $1,000 for the first violation and $2,500 for each subsequent violation, collectible by the Commissioner of Labor and Workforce Development in a summary proceeding pursuant to the “Penalty Enforcement Law of 1999,” P.L. 1999, c.274 (C.2A:58-10 et seq.).
7. a. Nothing in this act shall be construed to prevent an employer from complying with the requirements of State or federal statutes, rules or regulations, case law or rules of self-regulatory organizations.

b. Nothing in this act shall prevent an employer from implementing and enforcing a policy pertaining to the use of an employer issued electronic communications device.

This act shall take effect on the first day of the fourth month following enactment.