

STATE OF NEW YORK

2479

2019-2020 Regular Sessions

IN ASSEMBLY

January 22, 2019

Introduced by M. of A. DINOWITZ, L. ROSENTHAL, MOSLEY, GALEF, ABINANTI, JAFFEE, FAHY, COLTON, CRESPO, ORTIZ, WEPRIN, LAVINE, ARROYO -- Multi-Sponsored by -- M. of A. COOK, GOTTFRIED, HYNDMAN -- read once and referred to the Committee on Labor

AN ACT to amend the labor law and the education law, in relation to prohibiting an employer or educational institution from requesting or requiring that an employee, applicant or student disclose any user name, password, or other means for accessing a personal account through specified electronic communications devices

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The labor law is amended by adding a new section 201-h to
2 read as follows:

3 § 201-h. Request for access to personal accounts prohibited. 1. For
4 purposes of this section, the following words shall have the following
5 meanings:

6 (a) "Applicant" means an applicant for employment.

7 (b) "Electronic communications device" means any device that uses
8 electronic signals to create, transmit, and receive information, includ-
9 ing, but not limited to computers, telephones, personal digital assist-
10 ants and other similar devices.

11 (c) "Employer" means (i) a person or entity engaged in a business,
12 industry, profession, trade or other enterprise in the state; or (ii) a
13 unit of state or local government; and (iii) shall include an agent,
14 representative or designee of the employer.

15 (d) "Personal account" means an account or profile on an electronic
16 medium where users may create, share, and view user-generated content,
17 including uploading or downloading videos or still photographs, blogs,
18 video blogs, podcasts, instant messages, or Internet Web site profiles
19 or locations that is used by an employee or an applicant exclusively for
20 personal purposes.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 2. (a) Except as provided in paragraph (b) of this subdivision, it
2 shall be unlawful for any employer to request, require or coerce any
3 employee or applicant for employment:

4 (i) disclose any user name and password, password, or other authenti-
5 cation information for accessing a personal account through an electron-
6 ic communications device;

7 (ii) access the employee's or applicant's personal account in the
8 presence of the employer;

9 (iii) reproduce in any manner photographs, video, or other information
10 contained within a personal account.

11 (b) An employer may require an employee to disclose any user name,
12 password or other means for accessing nonpersonal accounts that provide
13 access to the employer's internal computer or information systems.

14 (c) For the purposes of this section, "access" shall not include an
15 employee or applicant voluntarily adding an employer or employment agen-
16 cy to their list of contacts associated with a personal internet
17 account.

18 3. An employer may not:

19 (a) Discharge, discipline, or otherwise penalize or threaten to
20 discharge, discipline, or otherwise penalize an employee for an employ-
21 ee's refusal to disclose any information specified in paragraph (a) of
22 subdivision two of this section; or

23 (b) Fail or refuse to hire any applicant as a result of the appli-
24 cant's refusal to disclose any information specified in paragraph (a) of
25 subdivision two of this section.

26 4. It shall be an affirmative defense to an action under this section
27 that the employer acted to comply with requirements of a federal, state
28 or local law.

29 5. (a) Nothing in this section shall prohibit an employer from:

30 (i) requesting or requiring an employee to disclose access information
31 to an account provided by the employer where such account is used for
32 business purposes and the employee was provided prior notice of the
33 employer's right to request or require such access information;

34 (ii) requesting or requiring an employee to disclose access informa-
35 tion to an account known to an employer to be used for business
36 purposes;

37 (iii) accessing an electronic communications device paid for in whole
38 or in part by the employer where the provision of or payment for such
39 electronic communications device was conditioned on the employer's right
40 to access such device and the employee was provided prior notice of and
41 explicitly agreed to such conditions. However, nothing in this subpara-
42 graph shall permit an employer to access any personal accounts on such
43 device;

44 (iv) complying with a court order in obtaining or providing informa-
45 tion from, or access to, an employee's accounts as such court order may
46 require;

47 (v) restricting or prohibiting an employee's access to certain
48 websites while using an employer's network or while using an electronic
49 communications device paid for in whole or part by the employer where
50 the provision of or payment for such electronic communications device
51 was conditioned on the employer's right to restrict such access and the
52 employee was provided prior notice of and explicitly agreed to such
53 conditions.

54 (b) This section does not prohibit or restrict an employer from
55 complying with a duty to screen employees or applicants prior to hiring
56 or to monitor or retain employee communications that is established

1 under federal law or by a self regulatory organization, as defined in
2 section 3(a)(26) of the securities and exchange act of 1934, 15 USC
3 78c(a)(26).

4 (c) This section does not prohibit or restrict an employer from view-
5 ing, accessing, or utilizing information about an employee or applicant
6 that can be obtained without any required access information or that is
7 available in the public domain.

8 6. The provisions of this section shall not apply to any law enforce-
9 ment agency, a fire department or a department of corrections and commu-
10 nity supervision.

11 § 2. The education law is amended by adding a new section 115 to read
12 as follows:

13 § 115. Request for access to personal accounts prohibited. 1. For
14 purposes of this section, the following words shall have the following
15 meanings:

16 (a) "Educational institution" means a public or private educational
17 institution or separate school or department of a public or private
18 educational institution, and includes an academy; elementary or second-
19 ary school; extension course; kindergarten; nursery school; school
20 system; school district; intermediate school district; business, nurs-
21 ing, professional, secretarial, technical, or vocational school; public
22 or private educational testing service or administrator; and an agent of
23 an educational institution. Educational institution shall be construed
24 broadly to include public and private institutions of higher education
25 to the greatest extent consistent with constitutional limitations.

26 (b) "Electronic communications device" means any device that uses
27 electronic signals to create, transmit, and receive information, includ-
28 ing, but not limited to computers, telephones, personal digital assist-
29 ants and other similar devices.

30 (c) "Personal account" means an account or profile on an electronic
31 medium where users may create, share, and view user-generated content,
32 including uploading or downloading videos of still photographs, blogs,
33 video blogs, podcasts, instant messages, or Internet Website profiles or
34 locations that is used by a student or a prospective student primarily
35 for personal purposes.

36 2. It shall be unlawful for any educational institution to:

37 (a) request, require, or coerce any student or prospective student to
38 disclose any user name and password, password, or other authentication
39 information that allows access to a personal account;

40 (b) request, require, or coerce a student or perspective student to
41 access the student's or prospective student's personal account in the
42 presence of the educational institution;

43 (c) request, require or coerce a student or perspective student to
44 reproduce in any manner photographs, videos, or other information
45 contained within a personal account; or

46 (d) suspend, expel, discipline, fail to admit, or otherwise penalize a
47 student or prospective student for failure to grant access to, allow
48 observation of, or disclose information that allows access to or obser-
49 vation of the student's or prospective student's personal account.

50 (e) For the purposes of this section, "access" shall not include a
51 student or applicant voluntarily adding an educational institution to
52 their list of contacts associated with a personal account.

53 3. Nothing in this section prohibits an educational institution from:

54 (a) accessing an electronic communications device paid for in whole or
55 in part by the educational institution where the provision of or payment
56 for such electronic communications device was conditioned on the educa-

1 tional institution's right to access such device and the student was
2 provided prior notice of and explicitly agreed to such conditions.
3 However, nothing in this paragraph shall permit an educational institu-
4 tion to access any personal accounts or services on such device; or

5 (b) requesting or requiring a student to disclose access information
6 to an account provided by the educational institution where such account
7 is used exclusively for educational purposes and the student or parent
8 or guardian for students under the age of eighteen was provided prior
9 notice of the educational institution's right to request or require such
10 access information. However, nothing in this subdivision shall permit
11 an educational institution to access any personal accounts on a communi-
12 cations device.

13 4. This section shall not prohibit or restrict an educational institu-
14 tion from viewing, accessing, or utilizing information about a student
15 or applicant that can be obtained without any required access informa-
16 tion or that is available in the public domain.

17 5. It is an affirmative defense to an action under this section that
18 the educational institution acted to comply with requirements of a
19 federal, state or local law.

20 § 3. This act shall take effect on the one hundred eightieth day after
21 it shall have become a law.