S T A T E O F N E W Y O R K

2891

2015-2016 Regular Sessions

I N A S S E M B L Y

January 20, 2015

Introduced by M. of A. BUCHWALD -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to protecting the privacy of employees' and prospective employees' social media accounts

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The labor law is amended by adding a new section 215-d to read as follows:

S 215-D. INVASION OF PRIVACY BY AN EMPLOYER AGAINST AN EMPLOYEE OR PROSPECTIVE EMPLOYEE. 1. DEFINITIONS. FOR PURPOSES OF THIS SECTION:

(A) "APPLICANT" MEANS AN APPLICANT FOR EMPLOYMENT.

(B) "ELECTRONIC COMMUNICATIONS DEVICE" MEANS ANY DEVICE THAT USES ELECTRONIC SIGNALS TO CREATE, TRANSMIT AND RECEIVE INFORMATION, AND SHALL INCLUDE BUT NOT BE LIMITED TO, COMPUTERS, TELEPHONES, PERSONAL DIGITAL ASSISTANTS AND OTHER SIMILAR DEVICES.

2. (A) AN EMPLOYER, EMPLOYER'S AGENT OR REPRESENTATIVE, OR ITS DESIGNEE SHALL NOT REQUIRE ANY EMPLOYEE OR APPLICANT TO DISCLOSE ANY LOG-IN NAME, PASSWORD OR OTHER MEANS FOR ACCESSING A PERSONAL ACCOUNT OR SERVICE THROUGH AN ELECTRONIC COMMUNICATIONS DEVICE.

(B) AN EMPLOYER, EMPLOYER'S AGENT OR REPRESENTATIVE, OR ITS DESIGNEE MAY REQUIRE AN EMPLOYEE TO DISCLOSE ANY LOG-IN NAME, PASSWORD OR OTHER MEANS FOR ACCESSING NON-PERSONAL ACCOUNTS OR SERVICES THAT PROVIDE ACCESS TO THE EMPLOYER'S INTERNAL COMPUTER OR INFORMATION SYSTEMS.

3. AN EMPLOYER, EMPLOYER'S AGENT OR REPRESENTATIVE, OR ITS DESIGNEE SHALL NOT:

(A) TERMINATE, DISCIPLINE OR OTHERWISE PENALIZE AN EMPLOYEE, OR THREATEN TO TERMINATE, DISCIPLINE OR OTHERWISE PENALIZE AN EMPLOYEE FOR THE EMPLOYEE'S REFUSAL TO DISCLOSE ANY INFORMATION IN VIOLATION OF SUBDIVISION TWO OF THIS SECTION; OR

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

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(B) FAIL OR REFUSE TO HIRE ANY APPLICANT AS A RESULT OF THE APPLICANT'S REFUSAL TO PROVIDE ANY INFORMATION IN VIOLATION OF SUBDIVISION TWO OF THIS SECTION.

4. WHERE A VIOLATION OF THIS SECTION IS ALLEGED TO HAVE OCCURRED, THE ATTORNEY GENERAL MAY APPLY IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK FOR AN ORDER ENJOINING OR RESTRAINING THE COMMISSION OR CONTINUANCE OF THE ALLEGED UNLAWFUL ACTS. IN ANY SUCH PROCEEDING, THE COURT MAY IMPOSE A CIVIL PENALTY IN THE AMOUNT OF THREE HUNDRED DOLLARS FOR THE FIRST VIOLATION AND FIVE HUNDRED DOLLARS FOR EACH SUBSEQUENT VIOLATION.

5. THIS SECTION DOES NOT PROHIBIT OR RESTRICT AN EMPLOYER FROM COMPLYING WITH A DUTY TO SCREEN EMPLOYEES OR APPLICANTS PRIOR TO HIRING OR TO MONITOR OR RETAIN EMPLOYEE COMMUNICATIONS THAT IS ESTABLISHED UNDER FEDERAL OR STATE LAW OR BY A SELF-REGULATORY ORGANIZATION, AS DEFINED IN SECTION 3(A)(26) OF THE SECURITIES AND EXCHANGE ACT OF 1934, 15 USC 78C(A)(26).

S 2. This act shall take effect immediately.