

# STATE OF NEW YORK

5485

2017-2018 Regular Sessions

## IN ASSEMBLY

February 9, 2017

Introduced by M. of A. DINOWITZ -- 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-g to  
2 read as follows:

3 § 201-g. 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.