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:

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

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

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

(b) "Electronic communications device" means any device that uses electronic signals to create, transmit, and receive information, including, but not limited to computers, telephones, personal digital assistants and other similar devices.

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

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

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

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

(i) disclose any user name and password, password, or other authentication information for accessing a personal account through an electronic communications device;

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

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

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

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

3. An employer may not:

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

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

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

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

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

(ii) requesting or requiring an employee to disclose access information to an account known to an employer to be used for business purposes;

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

(iv) complying with a court order in obtaining or providing information from, or access to, an employee's accounts as such court order may require;

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

(b) 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 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).

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

6. The provisions of this section shall not apply to any law enforcement agency, a fire department or a department of corrections and community supervision.

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

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

(a) "Educational institution" means a public or private educational institution or separate school or department of a public or private educational institution, and includes an academy; elementary or secondary school; extension course; kindergarten; nursery school; school system; school district; intermediate school district; business, nursing, professional, secretarial, technical, or vocational school; public or private educational testing service or administrator; and an agent of an educational institution. Educational institution shall be construed broadly to include public and private institutions of higher education to the greatest extent consistent with constitutional limitations.

(b) "Electronic communications device" means any device that uses electronic signals to create, transmit, and receive information, including, but not limited to computers, telephones, personal digital assistants and other similar devices.

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

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

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

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

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

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

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

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

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

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

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

4. This section shall not prohibit or restrict an educational institution from viewing, accessing, or utilizing information about a student or applicant that can be obtained without any required access information or that is available in the public domain.

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

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