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IN ASSEMBLY

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Introduced by M. of A. DINOWITZ, L. ROSENTHAL, GALEF, ABINANTI, FAHY, COLTON, WEPRIN, LAVINE, REYES, CRUZ, LUNSFORD, DICKENS, JACOBSON -- Multi-Sponsored by -- M. of A. COOK, GOTTFRIED, HYNDMAN -- read once and referred to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Labor in accordance with Assembly Rule 3, sec. 2 -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the labor law, in relation to prohibiting an employer from requesting or requiring that an employee or applicant 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; (ii) the
13 state of New York; (iii) a county, city, town, village or any other
14 political subdivision or civil division of the state; (iv) a school

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

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1 district or any government entity operating a public school, college, or
2 university; (v) a public improvement or special district; (vi) a public
3 authority, commission or public benefit corporation; or (vii) any other
4 public corporation, agency, instrumentality or unit of government which
5 exercises governmental power under the laws of the state; and (viii)
6 shall include an agent, representative or designee of the employer.

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

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

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

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

21 (iii) reproduce in any manner photographs, video, or other information
22 contained within a personal account obtained by the means prohibited in
23 this paragraph.

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

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

31 3. An employer may not:

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

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

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

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

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

47 (ii) requesting or requiring an employee to disclose access informa-
48 tion to an account known to an employer to be used for business
49 purposes;

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

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

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

11 (b) This section does not prohibit or restrict an employer from
12 complying with a duty to screen employees or applicants prior to hiring
13 or to monitor or retain employee communications that is established
14 under federal law or by a self regulatory organization, as defined in
15 section 3(a)(26) of the securities and exchange act of 1934, 15 USC
16 §78c(a)(26).

17 (c) This section does not prohibit or restrict an employer from view-
18 ing, accessing, or utilizing information about an employee or applicant
19 that can be obtained without any required access information, that is
20 available in the public domain, or for the purposes of obtaining reports
21 of misconduct or investigating misconduct, photographs, video, messages,
22 or other information that is voluntarily shared by an employee, client,
23 or other third party that the employee subject to such report or inves-
24 tigation has voluntarily given access to contained within such employ-
25 ee's personal account.

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

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