

STATE OF NEW YORK

2518

2023-2024 Regular Sessions

IN SENATE

January 23, 2023

Introduced by Sens. RAMOS, JACKSON -- read twice and ordered printed,
and when printed to be committed to the Committee on Labor

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 Assem-
bly, do enact as follows:

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

3 § 201-i. 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.

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

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

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

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

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

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

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

16 3. An employer may not:

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

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

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

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

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

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

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

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

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

52 (b) This section does not prohibit or restrict an employer from
53 complying with a duty to screen employees or applicants prior to hiring
54 or to monitor or retain employee communications that is established
55 under federal law or by a self regulatory organization, as defined in

1 section 3(a)(26) of the securities and exchange act of 1934, 15 USC
2 \$78c(a)(26).

3 (c) This section does not prohibit or restrict an employer from view-
4 ing, accessing, or utilizing information about an employee or applicant
5 that can be obtained without any required access information, that is
6 available in the public domain, or for the purposes of obtaining reports
7 of misconduct or investigating misconduct, photographs, video, messages,
8 or other information that is voluntarily shared by an employee, client,
9 or other third party that the employee subject to such report or inves-
10 tigation has voluntarily given access to contained within such employ-
11 ee's personal account.

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