



# New Jersey Passes Law Giving Employees Social Media Privacy Rights

## Client Advisories

09.04.2013

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On August 29, 2013, New Jersey joined a growing list of states by passing a social media privacy bill for New Jersey employees. The new law bars employers from requiring current or prospective employees to disclose user names or passwords, or to otherwise grant employers access to their personal social media accounts (such as Facebook, Instagram, etc.). Employers will now face sanctions if they decline to hire a new employee, or fire an existing employee, because he/she refused to divulge his/her social media account password. This new law will go into effect on December 1, 2013.

The new law was drafted in response to a May 2013 veto by Governor Chris Christie of an earlier, more expansive bill, which Christie said painted with "too broad a brush." The version signed into law mirrors its predecessor with respect to the conduct prohibited. Specifically, the law prohibits any employer from requiring its job applicants or existing employees to reveal their social media account passwords. It also prohibits employers from retaliating against current and prospective employees who refuse to provide access to a personal social media account or who participate in an investigation or otherwise oppose a violation of the law. Moreover, any agreement between the employer and employee to waive the protections provided by the law are void and unenforceable.

Nevertheless, the new law is more narrow than the vetoed version. Among other limitations, the new law: (1) will not apply to any social media accounts provided by the employer or used by an employee for business purposes, (2) will not prevent employers from conducting an investigation into work-related employee misconduct or disclosure of confidential employer information, as long as the investigation was initiated by the receipt of specific information about an employee's activity on a social media account; and (3) does not prevent employers from accessing information about a current or prospective employee that is publicly available.

Most significantly, the revised bill differs from its predecessor in that it does not provide employees with the option of filing a private civil action to enforce the law. Rather, aggrieved employees may report violations of the law to the Commissioner of Labor and Workforce Development. Employers who are deemed in violation of the law will be subject to a civil penalty of up to \$1,000 for a first violation and \$2,500 for each subsequent

violation, collectible by the Commissioner in a summary proceeding. Therefore, unlike the multitude of New Jersey employment laws that give employees a right to sue in Court with their own attorneys, this law only allows enforcement through the State.

If you have any questions regarding this law or other labor & employment matters, please contact a member of Archer's **Labor and Employment Department** in Haddonfield, N.J., at (856) 795-2121, in Flemington, N.J., at (908) 788-9700, in Princeton, N.J., at (609) 580-3700, in Hackensack, N.J., at (201) 342-6000, in Philadelphia, Pa., at (215) 963-3300, or in Wilmington, Del., at (302) 777-4350.

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