

MIND YOUR OWN BUSINESS! New Employment Laws for Social Media Accounts

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The Nutshell

Effective July 1, 2015, Virginia Code § 40.1-28.7:5 prohibits employers from requiring that current or prospective employees disclose information about their personal social media accounts.

Who does it apply to?

The new law applies to all private employers previously defined under Virginia Code § 40.1-2, such as individuals, partnerships, and corporations. But, now the new law expands the definition of “employer” to specifically include any unit of state or local government, such as counties, cities, and towns.

What constitutes a “social media account”?

Under the new law, a “social media account” means a personal account with an electronic medium to service where users may create, share, or view user-generated content, such as videos, photographs, blogs, podcasts, messages, emails, or website profiles or locations. So, popular sites like Facebook, Instagram, Tumblr, and Twitter are all covered. The new law, however, does not apply to accounts 1) opened by an employee at the request of an employer, such as a business Facebook page; 2) provided to an employee by an employer, such as the employer’s email account; 3) set up by an employee on behalf of an employer; or 4) set up by an employee to impersonate an employer through the use of the employer’s name, logos, or trademarks.

What’s not allowed?

Employers cannot require current or prospective employees to disclose the usernames or passwords to their personal social media accounts or require that they add another employee, supervisor, or administrator to the list of contacts associated with the account, such as a “friend” request. Employers cannot take action against or threaten to discharge, discipline, or otherwise penalize a current employee or



fail or refuse to hire a prospective employee for exercising his rights under the new law. Furthermore, if an employer inadvertently receives an employee's username or password, such as through an employer provided cell phone or laptop, although the employer shall not be liable for having the information, he cannot use the information to gain access to the employee's social media accounts.

What is allowed?

The new law does not prohibit an employer from viewing information about a current or prospective employee that is publicly available. So, if the employee's personal Facebook page utilizes no privacy settings, then it's fair game. Furthermore, the new law does not prevent an employer from complying with the requirements of federal, state, or local laws or affect an employer's existing rights or obligations to request an employee to disclose his username and password for the purpose of accessing a social media account if the employee's account activity is reasonably believed to be relevant to a formal investigation by the employer into allegations that the employee has violated federal, state, or local laws or the employer's written policies. If the employer exercises this right, however, the employee's username and password can only be used for the purpose of the formal investigation or a related proceeding.

Tips:

Virginia Code § 40.1-28.7:5 does not create a new cause of action for employees to bring against employers. However, it could be used as part of a wrongful termination action or in support of a grievance under a public employer's grievance policy. All employers should review their social media and hiring policies to ensure compliance with this new law. Furthermore, employers should identify what existing rights they have to request access to an employee's social media accounts in the event of a formal investigation of the employee.

If you are interested in more information or have questions about your organization's social media policy, the Employment Attorneys at Sands Anderson would be happy to assist.

