

## EMPLOYMENT LAWSCENE ALERT: WISCONSIN PASSES SOCIAL MEDIA PROTECTION ACT - HOW WILL IT AFFECT YOUR EMPLOYMENT PRACTICES?

On April 8, 2014, Governor Scott Walker signed into law the Wisconsin Social Media Protection Act (the "Act"). 2013 Wisconsin Act 208. The new law, which went into effect on April 10, 2014, Wis. Stat. § 995.55, prohibits employers from requesting an employee or an applicant to grant access to, allow observation of, or disclose information that allows access to or observation of the employee's or applicant's "Personal Internet account," defined as an "Internet-based account that is created and used by an individual exclusively for purposes of personal communications."

Specifically, under the new law, employers may not:

- Request or require an employee or applicant for employment to disclose access information for a Personal Internet account or otherwise grant access to or allow observation of that account as a condition of employment;
- Discharge or otherwise discriminate against an employee for:
  - Exercising his or her right to refuse to disclose access information, grant access to, or allow observation of his or her Personal Internet account;
  - Opposing a practice prohibited under the Act;
  - Filing a complaint or attempting to enforce any right under the Act; or
  - Testifying or assisting in any action or proceeding to enforce any right under the Act.
- Refuse to hire an applicant for employment because the applicant refused to disclose access information for, grant access to, or allow observation of the applicant's Personal Internet account.

The Act does, however, permit an employer to do any of the following:

- Request or require an employee to disclose access information to allow the employer to gain access to an account, service, or electronic communications device that the employer supplied or paid for (in whole or in part) in connection with the employee's employment or used for the employer's business purposes;
- Discharge or discipline an employee for transferring the employer's proprietary or confidential or financial information to the employee's Personal Internet account

without the employer's authorization;

- Conducting an investigation or requiring an employee to cooperate in an investigation if an employer has reasonable cause to believe that there has been:
  - Any alleged unauthorized transfer of confidential, proprietary, or financial information to the employee's Personal Internet account; or
  - Any other alleged employment-related misconduct, violation of the law, or violation of the employer's work rules, as specified in an employee handbook, if the misconduct is related to activity on the employee's Personal Internet account.

*(Although an employer can require an employee to grant access to or allow observation of the employee's Personal Internet accounts for this purpose, the employer may not require the employee to disclose access information for that account.)*

- Restrict or prohibit an employee's access to certain internet sites while using an electronic communication device supplied or paid for in whole or in part by the employer or while using the employer's network or other resources;
- Comply with a duty to:
  - Screen applicants prior to hiring; or
  - Monitor or retain employee communications as required by state or federal laws, rules, and regulations or the rules of a self-regulatory organization.
  - View, access, or use information about an employee or applicant for employment that can be obtained without access information or is available in the public domain; and
  - Request or require an employee to disclose his or her personal e-mail address.

An employee or applicant who believes he or she was discharged or otherwise discriminated against in violation of the Act may file a complaint with the Department of Workforce Development in the same manner as other employment discrimination complaints are filed and processed with the Department.

Employers should review and revise their policies and practices to ensure that they are in compliance with the Act. For more information about the Wisconsin Social Media Protection Act or if you have questions about whether your practices comply with the new law, please contact us.