

P.L.2013, CHAPTER 155, *approved August 28, 2013*
Assembly, No. 2878 (*Fourth Reprint*)

1 AN ACT prohibiting the requirement to disclose personal
2 information for certain electronic communications devices by
3 employers.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

8 1. For purposes of this act ³**[]**:³

9 “Electronic communications device” means any device that uses
10 electronic signals to create, transmit, and receive information,
11 including a computer, telephone, personal digital assistant, or other
12 similar device.

13 “Employer” means an employer or employer’s agent,
14 representative, or designee. ³The term “employer” does not include
15 the Department of Corrections, State Parole Board, county
16 corrections departments, or any State or local law enforcement
17 agency.³

18 ¹“Personal account” means an account, service or profile on a
19 social networking website that is used by a current or prospective
20 employee exclusively for personal communications unrelated to any
21 business purposes of the employer. This definition shall not apply
22 to any account, service or profile created, maintained, used or
23 accessed by a current or prospective employee for business
24 purposes of the employer or to engage in business related
25 communications.¹

26 “Social networking website” means an Internet-based service
27 that allows individuals to construct a public or semi-public profile
28 within a bounded system created by the service, create a list of
29 other users with whom they share a connection within the system,
30 and view and navigate their list of connections and those made by
31 others within the system.

32

33 2. No employer shall⁴**[]**:

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly floor amendments adopted June 21, 2012.

²Senate SLA committee amendments adopted September 20, 2012.

³Senate floor amendments adopted October 4, 2012.

⁴Assembly amendments adopted in accordance with Governor's recommendations May 6, 2013.

- 1 a. Require] require⁴ ²or request² a current or prospective
2 employee to provide or disclose any user name or password, or in
3 any way provide the employer access to, a personal account ¹[or
4 service]¹ through an electronic ²[communication]
5 communications² device⁴]; or
6 b. In any way]⁴ ²[inquire as to whether] ⁴[require or request
7 that² a current or prospective employee ²disclose whether the
8 employee² has]⁴ ¹[an] ⁴[a personal¹ account]⁴ ¹[or profile on a
9 social networking website]¹.

10
11 3. No employer shall require an individual to waive or limit
12 any protection granted under this act as a condition of applying for
13 or receiving an offer of employment. An agreement to waive any
14 right or protection under this act is against the public policy of this
15 State and is void and unenforceable.

16
17 4. No employer shall retaliate or discriminate against an
18 individual because the individual has done or was about to do any
19 of the following:

- 20 a. Refuse to provide or disclose any user name or password, or
21 in any way provide access to, a personal account ¹[or service]¹
22 through an electronic communications device;
23 b. ⁴[File a]⁴ ²[complain] ⁴[complaint² under] Report an
24 alleged violation of⁴ this act ⁴to the Commissioner of Labor and
25 Workforce Development⁴;
26 c. Testify, assist, or participate in any investigation,
27 proceeding, or action concerning a violation of this act; or
28 d. Otherwise oppose a violation of this act.

29
30 ⁴[5. Upon violation of any provision of this act, an aggrieved
31 person may, in addition to any other available remedy, institute a
32 civil action in a court of competent jurisdiction, within one year
33 from the date of the alleged violation. In response to the action, the
34 court may, as it deems appropriate, order or award any one or more
35 of the following:

- 36 a. With respect to a prospective employee:
37 (1) injunctive relief;
38 (2) compensatory and consequential damages incurred by the
39 prospective employee as a result of the violation, taking into
40 consideration any failure to hire in connection with the violation;
41 and
42 (3) reasonable attorneys' fees and court costs.
43 b. With respect to a current or former employee:
44 (1) injunctive relief as it deems appropriate, including
45 reinstatement of the employee to the same position held before the
46 violation or the position the employee would have held but for the

1 violation, as well as the reinstatement of full fringe benefits and
2 seniority rights;

3 (2) compensatory and consequential damages incurred by the
4 employee or former employee as a result of the violation, including
5 compensation for lost wages, benefits and other remuneration; and

6 (3) reasonable attorneys' fees and court costs.]⁴
7

8 ⁴[6.] 5.⁴ An employer who violates any provision of this act
9 shall be subject to a civil penalty in an amount not to exceed \$1,000
10 for the first violation and \$2,500 for each subsequent violation,
11 collectible by the Commissioner of Labor and Workforce
12 Development in a summary proceeding pursuant to the "Penalty
13 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).
14

15 ⁴[17.] 6.⁴ a. Nothing in this act shall be construed to prevent an
16 employer from complying with the requirements of State or federal
17 statutes, rules or regulations, case law or rules of self-regulatory
18 organizations.

19 b. Nothing in this act shall prevent an employer from
20 implementing and enforcing a policy pertaining to the use of an
21 employer issued electronic communications device ⁴or any accounts
22 or services provided by the employer or that the employee uses for
23 business purposes.

24 c. Nothing in this act shall prevent an employer from
25 conducting an investigation:

26 (1) for the purpose of ensuring compliance with applicable laws,
27 regulatory requirements or prohibitions against work-related
28 employee misconduct based on the receipt of specific information
29 about activity on a personal account by an employee; or

30 (2) of an employee's actions based on the receipt of specific
31 information about the unauthorized transfer of an employer's
32 proprietary information, confidential information or financial data
33 to a personal account by an employee.

34 d. Nothing in this act shall prevent an employer from viewing,
35 accessing, or utilizing information about a current or prospective
36 employee that can be obtained in the public domain⁴.¹
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38 ¹[7.] ⁴[8.] 7.⁴ This act shall take effect ¹[immediately] on the
39 first day of the fourth month following enactment¹.
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44 Prohibits requirement to disclose user name, password, or other
45 means for accessing account or service through electronic
46 communications device by employers.