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Louisiana Has Joined 16 Other States and Prohibits Employers from Accessing Employee Online Accounts

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Effective August 1, 2014, Louisiana joined at least sixteen other states who have enacted laws prohibiting or restricting employers from accessing employees' personal online accounts – including social media (Twitter, Facebook or similar sites), email accounts, or any other online accounts which the employee uses for anything other than a purely business-related reasons.

The "Personal Online Account Privacy Protection Act," codified as La. Rev. Stat. §§ 51:1951-1955, states that no employer may "request or require" any employee or job applicant to disclose the username, password, or any other authentication information related to a "personal online account." The Act broadly defines "personal online account," to include any online account which the employee uses "exclusively for personal communications unrelated to any business purpose." Thus, the statutory definition also includes personal blogs, personal email accounts, and any other manner of online account that is not directly related to the employer's business. In the event that an employer inadvertently learns an employee or applicant's username or password, it cannot use that information to access the personal account.

It is important to know that the law also sets forth a number of exceptions. For example, the law has crafted an exception that the employer may discipline or discharge the employee for wrongfully transferring confidential or proprietary information to his or her personal online account. However, this exception, as well as the other exceptions are crafted narrowly and prohibit the employer from accessing the account to "fish" for any confidential information. In other instances, the exceptions are confusing. Thus, employers are urged to consult with legal counsel for assistance in determining whether the following exceptions apply.

Even where the Louisiana statute permits carved exceptions for the employer, extreme caution should still be exercised whenever dealing with an employee's non-business related social media or similar account. Notably, the National Labor Relations Board has recently taken a keen interest in employers who attempt to monitor or censor their employees' social media accounts and has found that doing so may be an unlawful labor practice, even where the employer has not actually accessed the account in question. The NLRB is not bound by Louisiana law in determining whether an employer's action constitutes an "unfair labor practice."

If you have any questions about the potential impact or reach of this law, employer social media policies in general, the social media laws of any other state, or any other Louisiana employment law, please contact the authors of this alert.

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