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New Mexico Prohibits Employers from Requesting or Requiring Access to Prospective Employee Social Networking Accounts

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On April 5, 2013, New Mexico's governor made it unlawful for an employer to:

- request or require that a prospective employee divulge a password allowing access to his or her account or profile on a social networking Web site, or
- demand access in any other manner to a prospective employee's account or profile on a social networking Web site.

The new law makes exceptions, expressly providing that an employer may:

- implement policies regarding workplace use of the Internet, social networking sites, and electronic mail;
- monitor usage of the employer's electronic equipment and electronic mail (subject to the prohibitions set forth in the law); and
- obtain publicly available information about a prospective employee.

Moreover, the law does not cover federal, state and local law enforcement agencies.

Joining Maryland, Illinois, California, Michigan and Utah, New Mexico is now the sixth state to prohibit employers from mandating access to a job applicant's password-protected social media account. Unlike the other laws, however, New Mexico's is silent as to *current* employees. It also should be noted that New Mexico's new law does not set forth a remedial scheme for damages or penalties.

If you have any questions or concerns regarding these new laws or related developments, please contact your Proskauer lawyer or any co-chair of the Employment Law Counseling & Training Group.

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