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Employers Cannot Access Applicant or Employee Personal Social Media Accounts, Says Nevada

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On June 13, 2013, Nevada's governor signed A.B. 181 to restrict employer access to applicants' and employees' personal password-protected social media accounts,[1] adding to the state's existing anti-discrimination statute that recently was amended to regulate employer use of credit checks in hiring. Nevada joins ten other states with similar laws: Maryland, Illinois, California, Michigan, Utah, New Mexico (which ostensibly applies to prospective employees only), Arkansas, Colorado, Washington, and Oregon. The U.S. Congress and other state legislatures have proposed comparable legislation.

Under the new Nevada law, it is unlawful for any employer in the state to:

- Directly or indirectly, require, request, suggest or cause any employee or prospective employee to disclose the user name, password or any other information that provides access to his or her personal social media account (hereinafter, "authentication information"), or

- Discharge, discipline, discriminate against in any manner or deny employment or promotion to (or threaten to take any such action against), any employee or prospective employee who refuses, declines or fails to disclose authentication information.

The new Nevada law contains exceptions. It expressly allows an employer to require an employee to disclose the user name, password or any other information to an account or a service, other than a personal social media account, for the purpose of accessing the employer's own internal computer or information system. Moreover, nothing in the new Nevada law prevents an employer from complying with any state or federal law or regulation or with any rule of a self-regulatory organization (as defined by law).

Although the new Nevada law ostensibly amends the state's existing anti-discrimination statute, it does not specify which section(s) it, in fact, amends. Given this ambiguity, there are certain aspects of the new Nevada law – such as the scope of its coverage, protections, enforcement, and remedies – that are not entirely clear and could be subject to varying interpretations. As such, certain assumptions made in this alert may change should more information become available when the new Nevada law is codified into the state's existing anti-discrimination statute.

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If you have any questions or concerns regarding the new Nevada law, which takes effect October 1, 2013, please contact your Proskauer lawyer or any co-chair of the Employment Law Counseling & Training Group.

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[1] The new Nevada law defines "social media account" as any electronic service or account or electronic content, including, without limitation, videos, photographs, blogs, video blogs, podcasts, instant and text messages, electronic mail programs.

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