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Illinois Amends Social Media Law Enacted Just Last Year

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On August 1, 2012, Illinois became only the second state (after Maryland) to restrict employer access to an applicant's or employee's social media account. (For further discussion on the Illinois law, please read our prior alert entitled Illinois Second State to Prohibit Employers from Requiring Applicants and Employees to Divulge Social Media Passwords.)

Since then, nine other states have enacted similar laws – California, Michigan, Utah, New Mexico (which ostensibly applies to prospective employees only), Arkansas, Colorado, Washington, Oregon and Nevada. A number of these newer laws more sharply defined the scope of their coverage and included broader exceptions, perhaps prompting Illinois to amend its existing social media law on August 16, 2013.

In short, the amendments clarify that the law's proscriptions only apply to "personal accounts" used *exclusively* for personal communications unrelated to any business purposes of the employer, and not "professional accounts" used for business purposes of the employer.

Moreover, Illinois' amended law adds an exception that other state social media laws have adopted in one form or another. That is, where the password, account information, or access sought by the employer relates to a professional account, nothing restricts an employer from complying with a duty to screen employees or applicants prior to hiring, or to monitor or retain employee communications as required under Illinois insurance laws, federal law, or by a self-regulatory organization as defined by the Securities Exchange Act (such as the Financial Industry Regulatory Authority (FINRA)).

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If you have any questions or concerns regarding the amended Illinois law, or any other social media laws, please contact your Proskauer lawyer or any co-chair of the Employment Law Counseling & Training Group.

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