



Employee User Name and Password Privacy Protection Model Bill

Section 1. Definitions – As used in this Act,

- (A) “Personal social media account” shall mean an account with an electronic medium or service where users may create, share, and view user-generated content, including, but not limited to, uploading or downloading videos or still photographs, blogs, video blogs, podcasts, messages, e-mails, or Internet website profiles or locations. Personal social media account does not include an account opened at an employer’s behest, or provided by an employer, and intended to be used solely on behalf of the employer.
- (B) “Applicant” shall mean an applicant for employment.
- (C) “Employee” shall mean an individual who provides services or labor for an employer for wages or other remuneration.
- (D) “Employer” shall mean a person who is acting directly as an employer, or indirectly in the interest of an employer, on behalf of a for-profit, non-profit, charitable, governmental or other organized entity, in relation to an employee.
- (E) “Specific content” shall mean data or information on a personal social media account that is identified with sufficient particularity to:
 - (1) Demonstrate prior knowledge of the content’s details; and
 - (2) Distinguish the content from other data or information on the account with which it may share similar characteristics.

Section 2. An employer shall not:

- (A) Require, request, or coerce an employee or applicant to disclose the user name and password, password, or any other means of authentication, or to provide access through the user name or password, to a personal social media account;
- (B) Require, request, or coerce an employee or applicant to access a personal social media account in the presence of the employer in a manner that enables the employer to observe the contents of such account; or
- (C) Compel an employee or applicant to add anyone, including the employer, to their list of contacts associated with a personal social media account or require, request, or otherwise coerce an employee or applicant to change the settings that affect a third party’s ability to view the contents of a personal social networking account.

Section 3. An employer shall not:

- (A) Take any action or threaten to take any action to discharge, discipline, or otherwise penalize an employee for an employee’s refusal to disclose any information specified in



Section 2(A), for refusal to take any action specified in Section 2(B) or for refusal to add the employer to their list of contacts associated with a personal social media account or to change the settings that affect a third party's ability to view the contents of a personal social media account, as specified in Section 2(C); or

- (B) Fail or refuse to hire any applicant as a result of the applicant's refusal to disclose any information specified in Section 2(A) for refusal to take any action specified in Section 2(B) or for refusal to add the employer to their list of contacts associated with a personal social media account or to change the settings that affect a third party's ability to view the contents of a personal social media account, as specified in Section 2(C).

Section 4. Nothing in this Act shall prevent an employer from:

- (A) Accessing information about an employee or applicant that is publicly available;
- (B) Complying with state and federal laws, rules, and regulations and the rules of self-regulatory organizations, where applicable;
- (C) Requesting or requiring an employee or applicant to share specific content that has been reported to the employer, without requesting or requiring an employee or applicant to provide a user name and password, password, or other means of authentication that provides access to a personal social media account, for the purpose of:
 - (1) Ensuring compliance with applicable laws or regulatory requirements;
 - (2) Investigating an allegation, based on receipt of specific information, of the unauthorized transfer of an employer's proprietary or confidential information or financial data to an employee or applicant's personal social media account; or
 - (3) Investigating an allegation, based on receipt of specific information, of unlawful harassment in the workplace.
- (D) Prohibiting an employee or applicant from using a personal social media account for business purposes; or
- (E) Prohibiting an employee or applicant from accessing or operating a personal social media account during business hours or while on business property.

Section 5. If an employer inadvertently receives the user name and password, password, or other means of authentication that provides access to a personal social media account of an employee or applicant through the use of an otherwise lawful virus scan or firewall that monitors the employer's network or employer-provided devices, the employer is not liable for having the information, but may not use the information to access the personal social media account of the employee or applicant, may not share the information with anyone, and must delete the information immediately or as soon as is reasonably practicable.



Section 6. Enforcement

(A) Any employer or educational institution, including its employee or agents, who violates this Act shall be subject to legal action for damages and/or equitable relief, to be brought by any other person claiming a violation of this Act has injured his or her person or reputation. A person so injured shall be entitled to actual damages, including mental pain and suffering endured on account of violation of the provisions of this Act, and a reasonable attorney's fee and other costs of litigation.

Section 7. Severability:

The provisions in this Act are severable. If any part or provision of this Act, or the application of this Act to any person, entity, or circumstance, is held invalid, the remainder of this Act, including the application of such part or provision to other persons, entities, or circumstances, shall not be affected by such holding and shall continue to have force and effect.

Section 8. Effective Date:

This Act shall take effect upon passage.