

Employer Requests for Social Networking Passwords of Job Applicants May Lead to Liability

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Recently, a maelstrom of publicity arose over a Maryland public agency's practice of asking job applicants to disclose their Facebook or other social networking passwords. Two Senators called for the Equal Employment Opportunity Commission and the Department of Justice to determine whether any federal laws, such as Title VII or the Stored Communications Act, are being broken. In addition, a few state legislatures are currently considering bills that would ban the practice, and some Representatives have announced that they are in the process of drafting a similar bill to introduce in the House. Facebook recently released a statement announcing that it will fight attempts by employers to request passwords from job applicants by making it a violation of Facebook's Statement of Rights and Responsibilities to share or solicit a Facebook password. The practice of requesting employees' social media passwords may also open employers to other types of potential liability. For instance, by accessing an employee's social networking account, an employer may discover information about that employee's protected characteristics, such as a disability or their family genetic history. The mere possession of such protected information could make it more difficult for employers to defend against claims of employment discrimination. Aside from running the risk of potential liability, employers who ask current or potential employees for their social networking passwords may find that this practice can prove unpopular and can result in lowered employee morale or negative publicity. The recent furor underscores the importance of employers taking privacy considerations into account when deciding whether to use information from social media in making employment decisions.

Tip: Employers should refrain from asking current or prospective employees for their passwords to personal social networking sites and personal email accounts because this practice may expose employers to potential liability and result in lowered employee morale or negative publicity for the employer.

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