

CHAPTER 155

AN ACT prohibiting the requirement to disclose personal information for certain electronic communications devices by employers.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.34:6B-5 Definitions relative to disclosure of personal information for certain electronic communications devices.

1. For purposes of this act:

“Electronic communications device” means any device that uses electronic signals to create, transmit, and receive information, including a computer, telephone, personal digital assistant, or other similar device.

“Employer” means an employer or employer’s agent, representative, or designee. The term “employer” does not include the Department of Corrections, State Parole Board, county corrections departments, or any State or local law enforcement agency.

“Personal account” means an account, service or profile on a social networking website that is used by a current or prospective employee exclusively for personal communications unrelated to any business purposes of the employer. This definition shall not apply to any account, service or profile created, maintained, used or accessed by a current or prospective employee for business purposes of the employer or to engage in business related communications.

“Social networking website” means an Internet-based service that allows individuals to construct a public or semi-public profile within a bounded system created by the service, create a list of other users with whom they share a connection within the system, and view and navigate their list of connections and those made by others within the system.

C.34:6B-6 Prohibited actions by employers.

2. No employer shall require or request a current or prospective employee to provide or disclose any user name or password, or in any way provide the employer access to, a personal account through an electronic communications device.

C.34:6B-7 Waiver, limitation of protection prohibited.

3. No employer shall require an individual to waive or limit any protection granted under this act as a condition of applying for or receiving an offer of employment. An agreement to waive any right or protection under this act is against the public policy of this State and is void and unenforceable.

C.34:6B-8 Retaliation, discrimination prohibited.

4. No employer shall retaliate or discriminate against an individual because the individual has done or was about to do any of the following:

a. Refuse to provide or disclose any user name or password, or in any way provide access to, a personal account through an electronic communications device;

b. Report an alleged violation of this act to the Commissioner of Labor and Workforce Development;

c. Testify, assist, or participate in any investigation, proceeding, or action concerning a violation of this act; or

d. Otherwise oppose a violation of this act.

C.34:6B-9 Violations, penalties.

5. An employer who violates any provision of this act shall be subject to a civil penalty in an amount not to exceed \$1,000 for the first violation and \$2,500 for each subsequent violation, collectible by the Commissioner of Labor and Workforce Development in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

C.34:6B-10 Construction of act.

6. a. Nothing in this act shall be construed to prevent an employer from complying with the requirements of State or federal statutes, rules or regulations, case law or rules of self-regulatory organizations.

b. Nothing in this act shall prevent an employer from implementing and enforcing a policy pertaining to the use of an employer issued electronic communications device or any accounts or services provided by the employer or that the employee uses for business purposes.

c. Nothing in this act shall prevent an employer from conducting an investigation:

(1) for the purpose of ensuring compliance with applicable laws, regulatory requirements or prohibitions against work-related employee misconduct based on the receipt of specific information about activity on a personal account by an employee; or

(2) of an employee's actions based on the receipt of specific information about the unauthorized transfer of an employer's proprietary information, confidential information or financial data to a personal account by an employee.

d. Nothing in this act shall prevent an employer from viewing, accessing, or utilizing information about a current or prospective employee that can be obtained in the public domain.

7. This act shall take effect on the first day of the fourth month following enactment.

Approved August 28, 2013.