

New labor law increases personal account protections for employees

Emily E. Iannucci // March 21, 2024 //

Today's employees can be working and communicating with clients, vendors, colleagues and personal contacts from just about anywhere with seemingly the only limitation being that they can only be in one place at a time.

Employees' personal accounts may be synced among multiple devices, including on some company-owned or subsidized devices. This fluidity can blur the lines of privacy and proprietary information, so it's particularly important for business owners and employers to make sure they are up to date on any changes to applicable labor laws.

Earlier this month, Labor Law 201-i went into effect. This new law grants employees certain protections and privacy where their private accounts are concerned, whether those accounts are accessed through the employee's personal devices or devices provided by the employer.

Under the new law, employers are prohibited from requesting, requiring or coercing an employee or job applicant to:

- Disclose a username, password or other login information in order to access a personal account;
- Access a personal account in the employer's presence;
- Reproduce information contained within a personal account through unlawful measures.

This new legislation also prohibits an employer from disciplining or terminating an employee or refusing to hire an applicant who fails to disclose this information.

As defined by the law, personal accounts include those where users may create, share and view user-generated content (e.g., videos, photos, blogs, video blogs, podcasts, instant messages and internet profiles) used exclusively for personal purposes by the employee.

There are certain exceptions and limitations within the law. For example, an employer may require disclosure of passwords and login information to access nonpersonal accounts that provide access to the employer's internal computer and/or information systems. Employers may also continue to view, access and rely on information shared on employee accounts that is publicly available.

With proper notice to the employee, an employer may obtain login information for accounts provided by the employer if those accounts are used for business purposes. The employer may require access to an electronic communications device which is paid for in whole or in part by the employer provided the right to access that device for certain purposes was granted to the employee when they accepted the device. Even so, the employer is prohibited from accessing any personal employee accounts on the device.

Further, it's important to note this law does not apply to law enforcement agencies, fire departments and departments of corrections and community supervision.

Emily E. Iannucci is a management-side labor and employment law attorney and partner at Bond, Schoeneck & King PLLC in Garden City.