

Washington State Legislators Withdraw Bill Allowing Employers To Access Social Media Accounts During Investigations

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A proposed bill amendment in Washington's state legislature that could have allowed employers the right to demand access to employees' social media accounts during company investigations has been withdrawn this week. In January, state senators introduced S.B. 5211 to prevent employers from asking current and prospective employees to provide their social media passwords. The House Labor Committee proposed a controversial amendment that would have granted employers the right not just to request, but also the right to demand, access to employees' and applicants' Facebook, Twitter, LinkedIn, and other social media accounts to investigate allegations of workplace misconduct. The proposed amendment was troubling to those concerned with employee privacy, as some believed it would grant employers unfettered access to go on fishing expeditions through employees' private social media information. However, the proposed amendment was withdrawn and the original bill now awaits a vote.

Several states recently have addressed the topic of employee social media privacy. California, Illinois, Maryland, and Michigan are among the states that already have passed laws forbidding employers from requesting employees' or applicants' social media passwords, and over 30 states currently are considering similar legislation. However, although the prevailing trend may be toward greater social media privacy, the proposed exception in Washington's bill could signal a new trend to preserve employers' rights to access employees' and applicants' social media accounts in some scenarios. For example, proposed legislation in Ohio would only prevent employers from "recklessly" requesting applicants' social media passwords, leaving open the possibility that employers still could do so for cause. At this time, it is unclear how these divergent trends may continue in legislative debates in several states. What is clear at this time is that employee and applicant social media privacy is a hot issue and will continue to be contested in state legislatures across the country throughout 2013.

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