

Texas Legislature Will Consider Employers' Ability To Access Social Media Passwords

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Tomorrow, the Texas Legislature will convene and on the agenda is a bill regarding employers' ability to require employees to provide their social networking passwords. The bill, HB 318, introduced on Dec. 21, 2012 by Rep. Heleln Giddings (D), would make it illegal for employers to require, or even request, that applicants and current employees disclose their usernames and passwords for social networking sites such as LinkedIn, Twitter or Facebook.

Many experts have stated that the bill, as currently written, needs to be modified before passage occurs. Several have questioned whether damages are recoverable and, if so, whether there is a cap on such damages. Currently, there is no such language; however, Rep. Giddings has indicated she was "receptive to a low damages cap."

Another issue surrounding HB 318 involves employers' discovery of social networking information and how companies can monitor those activities. As currently written, employers simply cannot request applicants' and employees' passwords for social media sites; however, there is no prohibition against "shoulder surfing" where the company could require an applicant or employee log on the account and view it.

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Further, although the bill permits companies to implement policies regarding employees' usage of a company-owned devices as well as monitor company-owned email accounts and person devices during work hours, there is a lack of detail as to the degree in which employers can "monitor" such. For instance, is the monitoring limited to the amount of time spent on social media during work hours or does it extend to monitoring the content of employees' posts?

While clarification of these issues remains for the Texas Legislature, the introduction of HB 318 demonstrates a growing trend among other states. Presently, six states have laws prohibiting employers from requesting social media passwords from either applicants or employees and 14 states have similar legislation pending. It is anticipated that HB 318 will pass in an amended form given this trend.