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Recent Law Protects An Employees Social Media

By Laurel Champion

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Facebook, Twitter, Myspace, and other personal social media seem to play a role in the majority of news topics these days. Many are attracted to social media because it provides a way to share private information, philosophies, photos, reviews of everything from travel to restaurants, and countless other aspects of one's personal life.

Given all of that, it is not difficult to see the attraction this type of media presents to employers, particularly those who seek to conduct background checks, research potential employees, monitor employee conduct, and so on. Assembly Bill 1844 (codified as California Labor Code § 980), effective January 1, 2013, now prohibits an employer from requesting that a job applicant or employee provide access to his or her social media, except in limited circumstances. An employer is also prohibited from discharging or disciplining, threatening to discharge or discipline, or retaliating against an employee or applicant for failing to comply with any request made by the employer violating these rules.

The statute expressly provides that an employer may not "require or request" a job applicant or employee to do any of the following:

- Disclose a username or password for the purpose of accessing personal social media;
- Access personal social media in the presence of the employer; or
- Divulge any personal social media.

The exceptions to this statute are carefully carved out. For instance, the legislature created an exception for employers who issue electronic devices to employees. When such employers need access to these

devices and they are protected by a password known only to the employee, employers are not prohibited from requesting the password under these circumstances. This provision is in accord with a long line of case law holding that employees have increasingly fewer privacy rights when employer-issued electronics and/or other devices are involved.

The next exception was carved out to assist bona fide investigations where the information sought is reasonably believed to be relevant to an investigation of allegations of employee misconduct or employee violation of applicable laws or regulations, provided that the social media/information is used solely for these purposes.

As with any new law, it will be interesting to see how courts interpret the language in this statute, in regard to both the employer prohibitions and the available exceptions.

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Laurie and I had two very challenging real estate rights issues that we were advised were going to be difficult to prevail on. The RHRC team engaged with us and helped us understand our rights and prevailing position. RHRC were thoughtful advocates for us from the beginning to conclusion of our cases. We feel fortunate to know we will always be able to call on the firm in the future and that they are our legal counsel.

Albert "Rocky" and Laurie Pimental, President of Global Markets and Customers, Seagate Technology

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