

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 1915 and 1898

STATE OF NEW JERSEY
215th LEGISLATURE

ADOPTED SEPTEMBER 20, 2012

Sponsored by:

Senator STEPHEN M. SWEENEY

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Senator Gordon

SYNOPSIS

Prohibits requirement to disclose user name, password, or other means for accessing account or service through electronic communications device by employers.

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate Labor Committee.



(Sponsorship Updated As Of: 10/26/2012)

1 AN ACT prohibiting the requirement to disclose personal
2 information for certain electronic communications devices by
3 employers.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. For purposes of this act:

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

13 “Employer” means an employer or employer’s agent,
14 representative, or designee.

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

23 “Social networking website” means an Internet-based service
24 that allows individuals to construct a public or semi-public profile
25 within a bounded system created by the service, create a list of
26 other users with whom they share a connection within the system,
27 and view and navigate their list of connections and those made by
28 others within the system.
29

30 2. No employer shall:

31 a. Require or request a current or prospective employee to
32 provide or disclose any user name or password, or in any way
33 provide the employer access to, a personal account through an
34 electronic communications device; or

35 b. In any way require or request that a current or prospective
36 employee disclose whether the employee has a personal account.
37

38 3. No employer shall require an individual to waive or limit
39 any protection granted under this act as a condition of applying for
40 or receiving an offer of employment. An agreement to waive any
41 right or protection under this act is against the public policy of this
42 State and is void and unenforceable.
43

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

- 1 a. Refuse to provide or disclose any user name or password, or
2 in any way provide access to, a personal account through an
3 electronic communications device;
 - 4 b. File a complaint under this act;
 - 5 c. Testify, assist, or participate in any investigation,
6 proceeding, or action concerning a violation of this act; or
 - 7 d. Otherwise oppose a violation of this act.
8
- 9 5. Upon violation of any provision of this act, an aggrieved
10 person may, in addition to any other available remedy, institute a
11 civil action in a court of competent jurisdiction, within one year
12 from the date of the alleged violation. In response to the action, the
13 court may, as it deems appropriate, order or award any one or more
14 of the following:
- 15 a. With respect to a prospective employee:
16 (1) injunctive relief;
17 (2) compensatory and consequential damages incurred by the
18 prospective employee as a result of the violation, taking into
19 consideration any failure to hire in connection with the violation;
20 and
21 (3) reasonable attorneys' fees and court costs.
 - 22 b. With respect to a current or former employee:
23 (1) injunctive relief as it deems appropriate, including
24 reinstatement of the employee to the same position held before the
25 violation or the position the employee would have held but for the
26 violation, as well as the reinstatement of full fringe benefits and
27 seniority rights;
28 (2) compensatory and consequential damages incurred by the
29 employee or former employee as a result of the violation, including
30 compensation for lost wages, benefits and other remuneration; and
31 (3) reasonable attorneys' fees and court costs.
32
- 33 6. An employer who violates any provision of this act shall be
34 subject to a civil penalty in an amount not to exceed \$1,000 for the
35 first violation and \$2,500 for each subsequent violation, collectible
36 by the Commissioner of Labor and Workforce Development in a
37 summary proceeding pursuant to the "Penalty Enforcement Law of
38 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).
39
- 40 7. a. Nothing in this act shall be construed to prevent an
41 employer from complying with the requirements of State or federal
42 statutes, rules or regulations, case law or rules of self-regulatory
43 organizations.
 - 44 b. Nothing in this act shall prevent an employer from
45 implementing and enforcing a policy pertaining to the use of an
46 employer issued electronic communications device.

1 8. This act shall take effect on the first day of the fourth month
2 following enactment.