NYS ban on employer social media inquiries takes effect

Analysis | March 13, 2024

New York employers, are you thinking of asking applicants or employees to divulge their personal social media information? Think again. Last September, Gov. Kathy Hochul (D) signed legislation that prohibits all employers in the state from requesting or requiring that an employee or applicant for employment disclose any user name, password, or other means for accessing a personal account or service through specified electronic communications devices. The law took effect yesterday.

In addition to prohibiting requests for social media information, the law prohibits employers from taking adverse action against an applicant or employee for refusing to produce the information.

The law does not apply to credentials for employer accounts, accounts "known to an employer to be used for business purposes," employer accounts accessed on devices furnished by the employer, requests made pursuant to a court order, or employer restrictions on employee access to certain websites. It also does not prohibit employers from "viewing, accessing, or utilizing" information that is publicly available, in the public domain, or voluntarily shared with the employer in connection with an investigation of misconduct.

This development complicates the already dangerous area of employee monitoring, and joins a host of audio and video monitoring statutes, as well as the ever-present concerns under the federal Labor Management Relations Act as they relate to online union organizing efforts.

Please feel free to contact any attorney in our New York offices for more specific guidance.

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