

Employees and Applicants Will "Like" New Oregon Social Media Law

June, 2015

Under a new Oregon law, effective January 1, 2016, additional protections have been added to the current state law that restricts employer access to employees' and employment applicants' personal password-protected social media accounts. Under the new law, employers cannot require an employee or applicant either to (1) establish and maintain a personal social media account or (2) authorize the employer to advertise on the personal social media account of the employee or applicant.

Under current law, employers cannot:

- Require or request an employee or applicant to provide a password (or other means of authentication) for access to the non-public sections of a personal social media account;
- Compel an employee or applicant to add the employer to the list of contacts associated with a social media website (e.g., "friend" the employer);
- Require an employee or applicant to access a personal social media account in the presence of the employer in a manner that allows the employer to view contents that are not accessible by the public; or
- Discharge or discipline an employee, or refuse to hire an applicant, for failing to do any of the foregoing.

To the provisions above, the new law prohibits employers from doing the following:

- Require or request an employee or applicant to **establish or maintain a personal social media account**;
- Require the employee or applicant to **authorize the employer to advertise** on the personal social media account; or
- Discharge or discipline an employee, or refuse to hire applicant, for failing to do either of the foregoing,

The law only applies to social media accounts that are solely personal to the employee, and that have not been provided by the employer. "Personal social media account" is defined now for purposes of the law as "a social media account that is used by an employee or applicant for employment exclusively for personal purposes unrelated to any business purpose of the employer or prospective employer and that is not provided by or paid for by the employer or prospective employer."

The new statutory provisions define "social media" as "an electronic medium that allows users to create, share and view user-generated content, including, but not limited to, uploading or downloading videos, still photographs, blogs, video blogs, podcasts, instant messages, electronic mail, or Internet website profiles or locations."

Consistent with the current law, an employer is authorized to conduct investigations and access the public sections of a social media account as long as the employer does not require the disclosure of a password to access private sections of the account.