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To: Provosts
Chief Business Officers
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From: Erin Kastberg
System Legal Counsel

Date: June 13, 2014

Re: Personal Internet Account Access

Wisconsin recently enacted 2013 Act 208, which limits employers and educational institutions from accessing personal Internet accounts (e.g., personal email accounts and social media) of current and prospective employees and students. This memorandum provides an overview of the rights and restrictions applicable to employers and educational institutions under this new law.

Employers

The Act states that an employer may not:

- (1) Request or require an employee or applicant for employment, as a condition of employment, to disclose access information for the personal Internet account of the employee or applicant or to otherwise grant access to or allow observation of that account;
- (2) Discharge or otherwise discriminate against an employee for:
 - exercising the right to refuse to disclose access information for, grant access to, or allow observation of the employee's personal Internet account;
 - opposing a practice prohibited under (1) above;
 - filing a complaint or attempting to enforce a right under (1) above;
 - testifying or assisting in any action or proceeding to enforce any right under (1) above;
- (3) Refuse to hire an applicant for employment because the applicant refused to disclose access information for, grant access to, or allow observation of the applicant's personal Internet account.

As employers, we are permitted to do the following:

- (1) Request or require an employee to disclose access information to the employer in order for the employer to gain access to or operate an electronic communications device supplied or paid for in whole or in part by the employer;
- (2) Discipline or discharge employees who transfer confidential or proprietary information to their personal internet accounts without authorization;

- (3) Require an employee to cooperate in an investigation of employment-related misconduct, violations of law, or violation of employee handbook rules if the employer has “reasonable cause” to believe that the personal Internet account contains information related to the violation or misconduct;
- (4) Restrict or prohibit an employee’s access to certain Internet sites while using an electronic communications device supplies or paid for in whole or in part by the employer or while using the employer’s network or resources;
- (5) Comply with a duty to screen applicants for employment that is established under state or federal laws, rules, or regulations;
- (6) View, access, and use information that can be obtained without access information or that is available in the public domain; and
- (7) Require employees to disclose their personal email addresses

Educational Institutions

The Act states that an educational institution may not:

- (1) Request or require a student or prospective student, as a condition of admission or enrollment, to disclose access information for the personal Internet account of the student;
- (2) Expel, suspend, discipline, or otherwise penalize any student for:
 - exercising the right to refuse to disclose access information for, grant access to, or allow observation of the student’s personal Internet account;
 - opposing a practice prohibited under (1) above;
 - filing a complaint or attempting to enforce any right under (1) above;
 - testifying or assisting in any action or proceeding to enforce any right under (1) above;
- (3) Refuse to admit a prospective student because the prospective student refused to disclose access information for, grant access to, or allow observation of the prospective student’s personal Internet account.

However, as an educational institution, we may do the following:

- (1) Request or require a student to disclose access information to the educational institution in order for the institution to gain access to or operate an electronic communications device supplied or paid for in whole or in part by the institution; and
- (2) View, access, or use information about a student or prospective student that can be obtained without access information or that is available in the public domain.

Enforcement

This new law does not create a duty for an employer or educational institution to search or monitor the activity of any personal Internet account. Violations of the law may require a fine of up to \$1,000. A complaint alleging a violation of the law may be filed with the department of workforce development for processing in the same manner as employment discrimination complaints.

Please direct any questions about accessing personal Internet accounts or electronic devices provided by the institution to your campus counsel or the Office of General Counsel.

cc: David Miller
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