



On September 14, 2023, New York Governor Kathy Hochul signed into law a bill prohibiting employers from requesting or requiring that employees or job applicants disclose the log-in credentials for their personal social media accounts, or retaliating against employees or job applicants who refuse to do so.

Specifically, the new law makes it unlawful for "any employer to request, require or coerce any employee or applicant for employment to: (i) disclose any user name and password, password, or other authentication information for accessing a personal account through an electronic communications device; (ii) access the employee's or applicant's personal account in the presence of the employer; or (iii) reproduce in any manner photographs, video, or other information contained within a personal account obtained by [prohibited] means". Importantly, these new restrictions apply only to personal social media accounts; employers may still lawfully require employees who run company-sponsored social media accounts to disclose log-in credentials for such

accounts, provided that prior notice of the employer's right to do so was conveyed to the employee. Employers may also be able to access electronic communication devices for which they pay, either in whole or in part, but only if the provision of, or payment for, such device was conditioned on the employer's right to access the device and the employee was provided prior notice of—and explicitly agreed to—such conditions. Even then, access will not extend to personal material. Notably, employers may continue to access information about employees and job applicants which is in the public domain or otherwise accessible without the use of the individual's personal log-in credentials. The new law will take effect on March 12, 2024. Employers should closely assess their social media policies, implement appropriate internal procedures, and devise required acknowledgments and notices to ensure compliance with the law's requirements.

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