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BLOGS

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Passwords and Privacy

It has been less than 90 days since the Associated Press ran a [story](#) about employers requiring applicants and workers to provide their passwords to social media sites like Facebook, and now a new law makes this illegal. [Maryland](#) is the first state to enact a law making it unlawful for employers to ask applicants or employees to provide their log-in information. Other states have similar bills pending.

In late April, the Social Networking Online Protection Act, or [SNOA](#), was introduced in Congress. If passed, this law would prohibit current and potential employers from requiring a username, password, or other access to online content. These constraints would also apply to schools, from kindergarten through university level. It is too soon to know whether SNOA and similar state laws argue that many of us rely on sites like Facebook to stay connected to our friends and family, and that social media sites like Facebook are mediums for *private* communications. I am all for privacy and tend to agree with the general idea that an employer should not be allowed to require access to a social media site that is set up as private.

On the other hand, social media sites can provide a lot of job-related information about employees and applicants. These sites can also contain information that could cause liability for an employer, such as a Facebook post in which an employee threatens to harm his supervisor, or multiple anti-Semitic remarks posted by an employee and seen by his Jewish friends at work.

I once counseled a large retail employer which was notified by an employee that a co-worker had posted a butt video on Facebook. The employee reported to a manager that the video was a series of close-up shots of customers backsides, and that the brand name and logo of the employer was visible throughout the video. The manager knew that it would be risky to terminate the accused employee based on the report alone; he wanted to find out if the video was real. He asked the co-worker to sit with him at his desk and go to his Facebook page to take a look. The employee agreed, showed the manager the video, admitted to taking the video while on duty, and was fired. Under these new laws, what the manager did would be unlawful.

The new privacy laws appear to be well-intentioned, but their impact in the real world remains unknown. There are no easy answers for employers when it comes to online privacy rights of employees, and changes in the law are likely to continue and come quickly. Employers should closely monitor the legal developments in this area, implement or update policies as appropriate, train and educate employees about any policy changes, and seek legal advice when managing these issues.