

Legislation Text

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Amending Title 9 of The Philadelphia Code, entitled "Regulation of Businesses, Trades and Professions," by adding a new Chapter, protecting social networking privacy, by prohibiting an employer from requesting or requiring access, in any manner, to an employee's or prospective employee's account or profile on a social networking site and providing for enforcement and penalties, all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Title 9 of The Philadelphia Code is hereby amended to read as follows:

TITLE 9. REGULATION OF BUSINESSES, TRADES AND PROFESSIONS

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CHAPTER 9-3900. SOCIAL NETWORKING PRIVACY.

§ 9-3901. Definitions.

In this Chapter, the following definitions apply.

(1) *Applicant.* Any person considered or who requests to be considered for employment by an employer.

(2) *Electronic Communication Device.* A cell telephone, personal digital assistant, electronic device with mobile data access, laptop computer, pager, broadband personal communication device, electronic game or portable computing device.

(3) *Employee.* A person who performs work within the geographic boundaries of the City of Philadelphia for an employer for a salary, wages, commission or other compensation.

(4) *Employer.* An individual, co-partnership, association, corporation, governmental body, unit or agency, or other entity, who or that employs one or more persons on a salary, wage, commission or other compensation basis or any person or group of persons, acting directly or indirectly, in the interest of an employer in relation to any employee.

(5) *Social Networking Site.* An internet-based, personalized, privacy-protected website or application, whether free or commercial, that allows users to construct a private or semi-private profile site within a bounded system; create a list of other system users who are granted reciprocal access to the individual's profile site, send and receive email and share personal content, communications and contacts.

§ 9-3902. Prohibited Acts.

(1) Subject to the exceptions set forth in subsection (6) of this Section, no employer shall request or require that an employee or applicant disclose a user name, password or other related account information in order to gain access, by way of an electronic communication device, to the employee's or applicant's social networking site profile or account.

(2) No employer shall require or request that an employee or applicant log onto a social networking site, by way of an electronic communication device, in the presence of the employer or its agent, so as to provide the employer access to the employee's or applicant's social networking profile or account.

(3) No employer shall request access to or access an employee's or applicant's social networking site profile or account indirectly through any other person who is a social networking contact of the employee or applicant.

(4) No employer shall threaten to or discipline, discharge or otherwise penalize an employee for the employee's refusal to disclose any information specified in subsections (1) through (3) of this Section.

(5) No employer shall fail or refuse to hire any applicant as a result of the applicant's refusal to disclose any information specified in subsections (1) through (3) of this Section.

(6) *Exceptions.* Nothing in this Section shall restrict or limit an employer's right to:

(a) Establish and maintain lawful workplace policies governing the use of the employer's electronic equipment, including policies regarding internet use, social networking site use, and electronic mail use;

(b) Monitor usage of the employer's electronic equipment and electronic mail, without requesting or requiring an employee to provide any password or other related account information in order to gain access to the employee's or applicant's personal account or profile on a social networking website;

(c) Obtain information about an employee or applicant that is in the public domain or that is otherwise obtained in compliance with any federal or state law;

(d) Terminate or take adverse action against an employee or applicant if otherwise permitted by law; or

(e) Request user name or password information through a formal discovery process relating to litigation.

§ 9-3903. *Enforcement and Penalties.*

(1) Enforcement of the provisions of this Chapter shall be in an office or agency as the Mayor may designate.

(2) Any person aggrieved by a violation of this Chapter may report the violation to the office or agency, designated by the Mayor.

(3) The office or agency may issue an order directing the employer in violation to take action to redress

the harms suffered by the complainant and may order remedies, including, but not limited to:

- (a) An order to cease and desist such unlawful practice;*
 - (b) Any injunctive or other equitable relief, including hiring, reinstating or upgrading, with or without back pay;*
 - (c) Payment of compensatory damages;*
 - (d) Payment of reasonable attorneys' fees;*
 - (e) Payment of hearing costs as reimbursement for expenses incurred by the office or agency.*
- (4) Nothing in this Chapter limits the right of an aggrieved person to recover damages under any other applicable law or legal theory in a court of competent jurisdiction.*

SECTION 2. This Ordinance shall take effect 120 days after it becomes law.

Explanation:

Italics indicate new matter added.