

Don't Ask Me to Be Your Facebook Friend— New Social Media Law in Colorado

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With the amount of information that exists about people on the web, naturally employers are tempted to check up on it, for purposes of hiring, evaluations, and firing. Some employers take this to the level of requesting, even requiring, current or prospective employees to give their passwords or allow access onto their profiles. At least in Colorado, this practice must come to a screeching halt.

Colorado has just enacted C.R.S. § 8-2-127, a statute dealing with employer access to employee social media. Under the new statute, employers cannot require applicants or employees to provide passwords or change privacy settings to give access to social media accounts. Heck, they cannot even suggest or request this. If your Facebook page is “friends only,” your employer is out of luck. (If your FB is not “friends only,” you might want to re-think that.)

In addition, your Colorado employer cannot refuse to hire someone, or discipline them (or even threaten to do so), for not disclosing passwords, “friending” the employer, or changing their privacy settings.

All is not lost from the employer's perspective. Employers can comply with securities laws or investigate allegations that company proprietary or financial information is being downloaded. Employees can still be required to keep information confidential.

And the employer can still ask the employee to be a social media friend—but can't compel them or take any disciplinary action if they refuse. Good manners and common sense should prevail here—people don't usually punish people who don't want to be friends. This is true across social media. In addition, some forms of social media, like LinkedIn, are considered more professionally suitable than others, and thus more likely to include coworkers or bosses as friends. (My LinkedIn profile is professional but my FB posting is mostly family teasing or telling the kids how proud I am of them.)

If an employer does insist on “friending” the employee or otherwise violating this statute, the employee can file a complaint with the Department of Labor and Employment, which will investigate and have a hearing. An employer in violation will have to pay a small fine (and a large legal bill).

It was always a bit problematic to check up on applicants and employees through social media. Some reasons for not hiring/firing someone could be discriminatory, like age, disability, and genetic information, and even having accessed the information creates suspicion. Now, at least in Colorado, employers' ability to check up electronically is much more limited.