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Calif. Assembly OKs Bill To Shield Workers' Facebook Logins

By **Erin Coe**

Law360, San Diego (May 10, 2012, 5:00 PM ET) -- A landmark bill that aims to protect California employees and prospective workers from being asked by a company to turn over their usernames and passwords for their Facebook, Twitter and other social media accounts easily cleared the state Assembly on Thursday.

In a 73-0 vote, the full Assembly waved through A.B. 1844, sponsored by Assemblywoman Nora Campos, D-San Jose, that would make clear to employers doing background checks that they have no affirmative duty to look into employees and job applicants' social media accounts. The bill now heads to the state Senate for review.

While these sites often contain information about users' sexual orientation, religion, age and ethnicity, the measure would underscore that companies may not use the back door to get information they are otherwise barred from obtaining, according to an Assembly analysis.

With the increased popularity of social media, A.B. 1844 is a preemptive measure that seeks to provide critical guidelines about the accessibility of private information behind the social media wall, Campos said.

"I am proud to have received this overwhelming show of support for the protection of our privacy rights," she said. "I look forward to working with the Senate and the governor to ensure that this bill is enacted into law."

She noted at the hearing that an employer gaining access to employees' social media accounts is no different than if it went through their diaries, personal emails, photos or home videos. Because privacy laws have yet to be applied in any meaningful fashion to employers in the social media context, A.B. 1844 makes clear that employees have a right to privacy in their social media, she said.

"The information found on social media sites doesn't reflect [individuals'] skills or ability to do a job," she said.

Campos' bill came in response to employer workplace policies on social media that are being scrutinized in more than 129 cases around the country before the National Labor Relations Board.

If the bill is signed into law, it would prevent employers from even considering asking potential employees for their social media login information during the interview process, and is consistent with best practices for employers, according to Donald Schroeder, a member of Mintz Levin Cohn Ferris Glovsky and Popeo PC's employment group.

"They didn't need to legislate what should be common sense, but sometimes it needs to happen because there are people that lack it," he said.

The bill would put up a dividing screen that keeps employers from finding out more information than they need to about an employee or potential worker, and sends the message that it's not a good idea to ask for social media logins because it could lead to ramifications statutorily, he said.

"Some laws are drafted that are difficult or anti-business, but I don't think this bill is one of them," he said. "If anything, this protects employers from themselves."

Campos' bill has received support from the Privacy Rights Clearinghouse, the California Labor Federation, the United Food and Commercial Workers and others. Even the California Chamber of Commerce has identified the measure as a "job creator bill," saying it would limit frivolous and expensive litigation in case an employer hires an applicant who later engages in inappropriate behavior at the workplace.

The measure is related to S.B. 1349, authored by Sen. Leland Yee, D-San Francisco, which aims to protect personal social media account logins from being given out to employers and universities. Yee's bill is set to be heard by the Senate Appropriations Committee.

At the same time, the Assembly analysis notes that while there have some news reports about employers reportedly requesting social media logins of prospective employees, it remains unclear to what degree this is yet a significant issue.

The most well-known case is of Maryland's Department of Public Safety and Correctional Services reportedly asking prison guard applicants for their social media user names and passwords. That reported practice spurred Maryland to pass the first-ever law banning employers from demanding social media logins.

Illinois, Texas, Washington and New York have also introduced social media privacy bills, and on Wednesday, the Password Protection Act of 2012 was introduced by a group of congressional Democrats to bar employers from demanding access to workers' password-protected accounts on social media sites as a condition for employment.

California is a trailblazer for pushing through pro-employee legislation, such as statutory restrictions on meal breaks and wage-and-hour issues, and it's not surprising that Campos' bill is working its way through the state's legislative ranks, Schroeder said.

But while California and a handful of other states may end up passing social media privacy laws, Schroeder did not see it catching fire with most states or at the federal level.

"Senators and congressmen understand at this point that there are a lot more global issues related to the economy and other things that are worrying constituents, and I'm not sure this is at the top of the list," he said. "I don't envision this becoming another issue that really leads not just to a flurry of state activity, but also at the federal level. There's bigger fish to fry."

--Editing by John Quinn.

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