

Are New Jersey Employers Allowed to Ask for Access to a Job Applicant's Facebook Account?

If you're reading this online blog, you almost certainly have at least one personal account on [Facebook](#), [Twitter](#), [LinkedIn](#), or some other social media website. Your account is undoubtedly password protected, and if it is a [Facebook](#) or [Twitter](#) account (as opposed to a [LinkedIn](#) account, which tends to be more professional), you very likely have posts, photos, or other personal information on your page that you would prefer to keep private from a prospective employer.

However, a recent and disturbing trend is developing, as employers are increasingly demanding that job applicants provide their personal social media login information as part of the job application process. Some employers alternatively request a "shoulder surfing" session, during which job applicants log on to their social media accounts and navigate their posts while a nearby interviewer observes and reviews the applicant's posts, photos, comments, tweets, likes, friends, followers, connections, groups, etc. The issue has become so concerning that the [American Civil Liberties Union](#) (or ACLU) and [some state lawmakers](#) have become involved, advocating for the privacy rights of job applicants.

The issue at stake is whether a prospective employer's demand for personal social media login information of a job applicant, or request for a "shoulder surfing" session, violates the job applicant's right to privacy. New Jersey courts have not yet decided the issue, but it is clear that, when the issue does present itself in Court, [New Jersey employment lawyers](#) representing public sector applicants (those who apply to work for a government employer) will have more arguments than [New Jersey employment lawyers](#) representing private sector applicants (those who apply to work for a private sector employer).

Public sector applicants in New Jersey have not only common law rights to privacy, but also Constitutional protections – like the [First Amendment](#) right to free speech and the [Fourth Amendment](#) freedom from unreasonable searches – that apply against government employers. Private sector applicants in New Jersey, on the other hand, are protected strictly by common law rights to privacy.

For instance, New Jersey recognizes the common law privacy tort of "intrusion on seclusion." In general, the law provides that "[o]ne who intentionally intrudes ... upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person." The analysis of reasonableness has both subjective and objective components. In any lawsuit raised against a New Jersey employer involving social media privacy rights, the question of reasonableness, and more specifically, whether the job applicant or employee has a "reasonable expectation of privacy," is likely to be a key issue, one that should be entrusted to an [experienced New Jersey employment lawyer](#).

The Supreme Court of New Jersey has already held, in [Stengart v. Loving Care Agency, Inc.](#), that employees have a "reasonable expectation of privacy" in email communications created using a personal, password protected email account, even if such emails were created on a company-owned computer. Moreover, a federal District Court in New Jersey has already held,

in [Pietrylo v. Hillstone](#), that two supervisors violated the federal Stored Communications Act (as well as a similar state statute) by requesting an employee's login information to a private, password protected MySpace page that was created by employees on an "invitation only" basis.

Whether New Jersey job applicants have a "reasonable expectation of privacy" in personal content on their [Facebook](#), [Twitter](#), [LinkedIn](#), or other social media accounts, is an inquiry that must be addressed on a case-by-case basis depending on the particular facts at issue. [Facebook](#) alone, has more than [150 million users in the United States](#), and according to a [recent study](#), is the second most accessed website in the United States (second only to Google), so time will certainly tell.

[The Resnick Law Group, P.C.](#) has been advocating the privacy rights of job applicants and employees, and handling employment law matters on behalf of employees, for more than 30 years in and around New Jersey and New York. If you feel your employer or prospective employer has violated your privacy rights, contact the [Resnick Law Group, P.C.](#) at 973-781-1204 or 646-867-7997. We are located in East Hanover, N.J. and Midtown Manhattan on Broadway.