

Morrison & Foerster Client Alert.

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New California Law Limits Employer Access to Employee Social Media Accounts

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On September 27, 2012, California Governor Jerry Brown signed a bill that restricts employer access to the “personal social media”¹ of employees and applicants for employment.

Assembly Bill 1844 (“AB 1844”)² adds to the California Labor Code new section 980. Under this section, an employer may not “require or request” an employee or applicant to do any of the following:

- Disclose a username or password for the purpose of accessing personal social media;
- Access personal social media in the employer’s presence; or
- Divulge any personal social media, except in connection with the investigation of allegations of an employee’s misconduct or violation of applicable laws.³

The exception for employee investigations applies if the employer reasonably believes that the personal social media is relevant to the investigation or to a related proceeding, and does not use the personal social media for any other purpose.⁴

AB 1844 does not preclude an employer from requiring or requesting an employee “to disclose a username, password, or other method for the purpose of accessing an employer-issued electronic device.”⁵

¹ AB 1844 defines “social media” as “an electronic service or account, or electronic content, including, but not limited to, videos, still photographs, blogs, video blogs, podcasts, instant and text messages, email, online services or accounts, or Internet Web site profiles or locations.” Cal. Lab. Code § 980(a).

² The text and legislative history of AB 1844 is available at <http://www.leginfo.ca.gov/>.

³ Cal. Lab. Code § 980(b), (c).

⁴ Cal. Lab. Code § 980(c).

⁵ Cal. Lab. Code § 980(d).

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AB 1844 expressly prohibits retaliation against an employee or applicant who declines to comply with a request that violates the terms of AB 1844, but it does not immunize the individual from any adverse action that is otherwise permitted by law.⁶

Notably, the state Labor Commissioner is not required to investigate or determine violations of AB 1844.

AB 1844, which passed in both the California Senate and Assembly by wide margins, is similar to recently enacted laws in Delaware, Maryland, and Illinois. During this legislative season, at least 13 states have proposed legislation restricting employer access to employee social media accounts.⁷

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⁶ Cal. Lab. Code § 980(e).

⁷ In addition to California, Delaware, Illinois, and Maryland, these states include Massachusetts, Michigan, Minnesota, New Jersey, New York, Ohio, Pennsylvania, South Carolina, and Washington.