

# EMPLOYMENT LAW ALERT

April 2012

**Save the Date!**

## *Navigating the Wage & Hour Minefield*

An RMF "Best Practices" Roundtable Seminar  
**with a Special Distinguished Guest Speaker**

**Wednesday May 23, 2012**

**8:00 - 10:00 a.m.**

at the offices of Ruskin Moscou Faltischek, P.C.  
RXR Plaza, Uniondale

Invitation to Follow

### **Ruskin Moscou Faltischek's Employment Law Capabilities**

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- Employee Policy Manuals
- Family and Medical Leave
- Wage and Hour Requirements
- Employee vs. Independent Contractor
- Executive Employment Agreements and Severance Packages
- Comprehensive Litigation Services

## **First Law Passed Banning Request for Personal Passwords**

By: Jeffrey M. Schlossberg



Maryland has become the first state to pass a law prohibiting employers from requesting Facebook (or other online account) password information from job applicants or employees (the law is awaiting the Governor's signature as of now). This legislation, which would become effective October 1, 2012, comes on the heels of a media storm that erupted when news of a recent employer's request for an applicant's password information went viral.

The law provides that an employer may not request or require that an employee or applicant disclose any user name, password, or other means for accessing a personal account or service through a computer or other electronic device. The law does provide an exception for company owned equipment and accounts.

An employer may not (a) discharge, discipline, or otherwise penalize or threaten to discharge, discipline, or otherwise penalize an employee

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for refusal to disclose such information or (b) fail or refuse to hire any applicant as a result of the applicant's refusal to disclose any such information.

The law does not prevent an employer from ensuring compliance with securities and financial laws or investigating alleged improper downloading of proprietary or confidential financial information. However, the law does not create a carve-out for investigation of harassment claims. Thus, employers in Maryland would not be permitted to request employee passwords during such an investigation.

Notably, the law does not contain any enforcement mechanism nor recite penalties, fines, damages, etc. for non-compliance -- further evidence that the law likely was a rush to legislate in response to media exposure.

In other developments, New York Senator Charles Schumer requested that the Department of Justice and Equal Employment Opportunity Commission investigate the practice of requesting applicant passwords. According to an article that appeared in The New York Times on March 25, 2012, Senator Schumer stated, "In an age where more and more of our personal information -- and our private social interactions -- are online, it is vital that all individuals be allowed to determine for themselves what personal information they want to make public and protect personal information from their would-be employers. This is especially important during the job-seeking process, when all the power is on one side of the fence."

One can only wonder what type of legislation will be next. We will keep you informed of further developments.

## NLRB Poster -- Delayed Again

The NLRB's rule requiring the posting of employee rights under the National Labor Relations Act, which had been scheduled to take effect on April 30, will be delayed once more. This results from an injunction issued by a federal appellate court this week.

According to the NLRB, Regional offices will not implement the rule pending the resolution of the issues before the court.

We will keep you "posted."

If we can be of assistance on these or any employment law issues, please do not hesitate to contact us.

  
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