

Internet Litigation and Dispute Resolution Alert

Illinois and Federal Legislation Poised to Restrict Employer Access to Social Networking Accounts

Governor to Sign Amendment to the Illinois Right to Privacy in the Workplace Act

The office of Illinois Governor Pat Quinn recently announced that Governor Quinn will sign legislation that will amend Illinois' Right to Privacy in the Workplace Act, 820 ILCS 55/1 et seq. (the Act), to prohibit employers from requesting or requiring employees and applicants for employment to disclose their log-in credentials for, or to grant access to, their social media accounts. Once the legislation has been signed, Illinois will be the second state in the country (after Maryland) to prohibit employers from requesting or requiring social networking log-in credentials from applicants and employees.

The legislation will amend Section 55/10 of the Act, titled "Prohibited Inquiries," by adding the following provisions:

(b)(1) It shall be unlawful for any employer to request or require any employee or prospective employee to provide any password or other related account information in order to gain access to the employee's or prospective employee's account or profile on a social networking website or to demand access in any manner to an employee's or prospective employee's account or profile on a social networking website.

(2) Nothing in this subsection shall limit an employer's right to (A) promulgate and maintain lawful workplace policies governing the use of the employer's electronic equipment, including policies regarding Internet use, social networking site use, and electronic mail use; and (B) monitor usage of the employer's electronic equipment and the employer's electronic mail without requesting or requiring any employee or prospective employee to provide any

password or other related account information in order to gain access to the employee's or prospective employee's account or profile on a social networking website.

(3) Nothing in this subsection shall prohibit an employer from obtaining about a prospective employee or an employee information that is in the public domain or that is otherwise obtained in compliance with this amendatory Act of the 97th General Assembly.

(4) For the purposes of this subsection, "social networking website" means an Internet-based service that allows individuals to: (A) construct a public or semi-public profile within a bounded system, created by the service; (B) create a list of other users with whom they share a connection within the system; and (C) view and navigate their list of connections and those made by others within the system. "Social networking website" shall not include electronic mail.

Notably, the Illinois law contains no express exceptions, including for legitimate workplace investigations. It also does not address the issue of employees who save their personal social media passwords on their employer computers.

Pending Federal Legislation to Limit Employer Access to Employee Social Media and Personal Internet Sites

Congress is attempting to extend this type of restriction to employers nationwide with two currently pending bills, the Social Networking Online Protection Act (SNOPA), introduced in the House on April 27, 2012, and the Password Protection Act of 2012 (PPA), introduced in both the House and the Senate in May 2012.

SNOPA would prohibit employers from requiring or requesting that an employee or applicant for employment provide the employer with a user name, password or any other means for accessing a private e-mail account or social networking account of the employee or applicant.

Notably, SNOPA also prohibits institutions of higher learning and elementary and secondary schools from requiring or requesting access to a student or applicant's private e-mail account or social networking website.

The PPA would not only prohibit employers from requiring or requesting log-in credentials from their employees and applicants for employment, but it would prohibit employers from compelling or coercing employees and applicants to provide access to, and subsequently retrieving information from, the online servers on which private user information is stored if that information is secured against general public access by the user. For example, if an employee looks at his or her Facebook or Gmail account from a workplace computer, the PPA would prohibit the employer from requiring the employee to disclose his or her password or to allow access to the employee's social media account, because that action would provide the employer with access to another computer (that of Facebook or Google). However, the PPA would not prevent an employer from accessing its own computer systems to recover evidence

of an employee's social media and Internet activities that occurred on the employer's own computers. The PPA also would not apply to students, employees who work with children under age 13 or designated government employees.

Next Steps for Employers

Employers with employees in Illinois should review their human resources policies and practices to make sure they conform to this change in Illinois law. In addition, employers should advise recruiters and managers who interact with applicants and employees in Illinois of this change to ensure their compliance.

Vedder Price will continue to monitor developments in proposed Internet and social media legislation. Should you have any questions concerning the change in Illinois law or any other Internet law and technology concerns, please do not hesitate to contact any of the attorneys in Vedder Price's Internet Litigation and Dispute Resolution practice group.

Internet Litigation and Dispute

Resolution Group Members

Jeffrey C. Davis	+1 (312) 609 7524
Bruce A. Radke.....	+1 (312) 609 7689
Robert S. Rigg.....	+1 (312) 609 7766
Cindy S. Stuyvesant.....	+1 (312) 609 7675
Alain Villeneuve.....	+1 (312) 609 7745
Michael J. Waters	+1 (312) 609 7726

The Internet Litigation and Dispute Resolution Group

The Vedder Price Internet Litigation and Dispute Resolution group has the legal experience, business acumen and technical comprehension necessary to successfully resolve and avoid Internet-related disputes. For our attorneys, the Internet is not incidental to our practice. It is a focus. Vedder Price attorneys not only represent clients with an Internet presence or who provide Internet-related services, but our attorneys actively publish, speak and educate others on the rapidly developing legal nuances of social media, e-commerce and other Internet-related law.

Members of the Internet Litigation and Dispute Resolution group routinely assist clients with Internet-related matters, including those involving:

- Intellectual Property Litigation
- Privacy and Data Breach Preparation and Response
- Online Defamation and Disparagement
- Licensing, Development, Outsourcing, Maintenance and Hosting Disputes

About Vedder Price

Vedder Price is a business-oriented law firm composed of more than 265 attorneys in Chicago, New York, Washington, DC and London. The firm combines broad, diversified legal experience with particular strengths in commercial finance, corporate and business law, financial institutions, labor and employment law and litigation, employee benefits and executive compensation law, occupational safety and health, general litigation, environmental law, securities, investment management, tax, real estate, intellectual property, estate planning and administration, health care, trade and professional associations and not-for-profit organizations.

This communication is published periodically by the law firm of Vedder Price P.C. and is intended to keep our clients and interested parties generally informed about recent legal developments. It is not a substitute for professional advice. For purposes of the New York State Bar Rules, this communication may be considered ATTORNEY ADVERTISING. Prior results do not guarantee a similar outcome.

Vedder Price is an international law firm operating through various separate and distinct entities. One of those entities is Vedder Price LLP, which operates in England and Wales and is regulated by the Solicitors Regulation Authority. For further information, please refer to www.vedderprice.com.

© 2012 Vedder Price P.C. Reproduction of this communication is permitted only with credit to Vedder Price P.C. For additional copies or an electronic copy of this newsletter, please contact us at info@vedderprice.com.

VEDDER PRICE®

222 NORTH LASALLE STREET

CHICAGO, ILLINOIS 60601

T: +1 (312) 609 7500 | F: +1 (312) 609 5005

1633 BROADWAY, 47TH FLOOR

NEW YORK, NEW YORK 10019

T: +1 (212) 407 7700 | F: +1 (212) 407 7799

1401 I STREET NW, SUITE 1100

WASHINGTON, DC 20005

T: +1 (202) 312 3320 | F: +1 (202) 312 3322

200 ALDERSGATE

LONDON EC1A 4HD

T: +44 (0)20 3440 4680 | F: +44 (0)20 3440 4681

www.vedderprice.com