September 3, 2013

New Jersey Social Media Privacy Bill Signed by Gov. Christie

On August 29, Governor Chris Christie signed a bill that bars employers from requiring job candidates or current employees to disclose their usernames and passwords for social media sites.

The law allows aggrieved employees or applicants to report violations to the Commissioner of the Department of Labor and Workforce Development, with employers being liable for fines of $1,000 for a first violation and $2,500 for repeat violations. The law also prohibits employers from retaliating in any way against an employee who exercises his or her rights under the law. These retaliation provisions extend to employees who refuse to provide their passwords, report violations, or participate in investigations into violations of the law.

Gov. Christie conditionally vetoed a previous version of the legislation that would have provided employees the right to bring private civil actions to enforce the bill. In his veto, the governor also added a provision allowing employers to request or require that employees disclose whether they maintain a private social media account. Therefore, in the version of the bill signed by Gov. Christie, employers may require employees or applicants to disclose whether they maintain a private social media account. The new law makes clear that (1) the law will not apply to an individual's social media accounts that are used for business purposes; (2) employers may access an employee's or applicant's social media pages to the extent that they are shared publicly; and (3) employers may investigate a violation of law, employee misconduct, or the unauthorized transfer of proprietary, confidential or financial information via an employee's personal social media account.

New Jersey joins a growing list of states with similar protections for current or prospective employees, including Arkansas, California, Illinois, Maryland, New Mexico, Oregon and Washington. These laws have garnered much media attention as they have progressed through their respective legislatures. However, it is unclear whether the problem addressed by the statutes?- employers requiring employees' usernames and passwords?- is sufficiently widespread for the statutes to have much, if any, impact in the workplace.