

CHAPTER 146  
FORMERLY  
HOUSE BILL NO. 109  
AS AMENDED BY  
HOUSE AMENDMENT NOS. 1 & 2  
AND  
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO EMPLOYMENT PRACTICES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 7, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 709A. Employer use of social media.

(a) For purposes of this section, the following definitions shall apply:

(1) "Applicant" means a prospective employee applying for employment.

(2) "Electronic communication device" means a cellular telephone, personal digital assistant, electronic device with mobile data access, laptop computer, pager, broadband personal communication device, 2-way messaging device, electronic game, or portable computing device.

(3) "Employee" means any individual employed within the State by an employer. This section does not apply to employees or applicants of the United States government in those capacities.

(4) "Employer" means any any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee or applicant, including the State and any political subdivision or board, department, commission, or school district thereof, and excluding the United States government.

(5) "Personal social media" means an account on a social networking site created and operated by an employee or applicant exclusively for the employee or applicant's personal use. "Personal social media" does not include an account on a social networking site created or operated by an employer and that is operated by an employee as part of their employment.

(6) "Social networking site" means an internet-based, personalized, privacy-protected website or application whether free or commercial that allows users to construct a private or semi-private profile site within a bounded system, create a list of other system users who are granted reciprocal access to the individual's profile site, send and receive e-mail, and share personal content, communications, and contacts.

(b) An employer shall not require or request an employee or applicant to do any of the following:

(1) Disclose a username or password for the purpose of enabling the employer to access personal social media.

(2) Access personal social media in the presence of the employer.

(3) Use personal social media as a condition of employment.

(4) Divulge any personal social media, except as provided in subsection (d) of this section.

(5) Add a person, including the employer, to the list of contacts associated with the employee's or applicant's personal social media, or invite or accept an invitation from any person, including the employer, to join a group associated with the employee's or applicant's personal social media.

(6) Alter the settings on the employee's or applicant's personal social media that affect a third party's ability to view the contents of the personal social media.

(c) Nothing in this section shall affect an employer's rights and obligations under the employer's personnel policies, federal or state law, case law, or other rules or regulations to require or request an employee to disclose a username, password, or social media reasonably believed to be relevant to an investigation of allegations of employee misconduct or employee violation of applicable laws and regulations, provided that the social media is used solely for purposes of that investigation or a related proceeding.

(d) Nothing in this section precludes an employer from requiring or requesting an employee to disclose a username, password, or other method for the purpose of accessing (i) an electronic communication device supplied by or paid for in whole or in part by the employer; or (ii) an account or service provided by the employer, obtained

by virtue of the employee's employment relationship with the employer, or used for the employer's business purposes.

(e) Nothing in this section precludes an employer from monitoring, reviewing, accessing, or blocking electronic data stored on an employer's network or on an electronic communications device supplied by or paid for in whole or in part by the employer.

(f) Nothing in this section precludes an employer from complying with a duty to screen employees, or applicants before hiring, or to monitor or retain employee communications (i) that is established under federal or state law or by a self-regulatory organization, as defined in the Securities and Exchange Act of 1934, 15 U.S.C. § 78c(a)(26); or (ii) in the course of a law enforcement employment application or law enforcement officer conduct investigation performed by a law enforcement agency.

(g) Nothing in this section precludes an employer from viewing, accessing, or using information about an employee or applicant that is in the public domain..

(h) An employer shall not discharge, discipline, threaten to discharge or discipline, or otherwise retaliate against an employee or applicant for not complying with a request or demand by the employer that violates this section. However, this section does not prohibit an employer from terminating or otherwise taking an adverse action against an employee or applicant if otherwise permitted by law.

Section 2. This provision of this Act shall be effective upon its enactment into law.

Approved August 07, 2015