

MICHIGAN'S NEW "INTERNET PRIVACY PROTECTION ACT"

MICHIGAN GOVERNOR SIGNS "INTERNET PRIVACY PROTECTION ACT."

The Basics of the New Michigan Law

On December 28, 2012, Governor Rick Snyder of Michigan signed into law the Internet Privacy Protection Act. In general, the law, which takes effect immediately, prohibits an employer from requesting that an employee or applicant disclose or provide access to his or her personal internet account, such as a site for social media, e-mail or stored data. The law also prohibits an employer from taking action against an applicant or employee for refusing to provide such access. The new law regulates educational institutions in a similar manner. Michigan joins Maryland, Illinois, California and New Jersey that have also passed social media laws protecting employees in various circumstances.

IMPORTANT EXCEPTIONS FOR MICHIGAN EMPLOYERS

The Act outlines some important exceptions and exclusions that will interest employers. One exception permits an employer to request access for the purpose of investigating compliance with the law or with "prohibitions against work-related employee misconduct" if the employer possesses "specific information" that justifies such access. In addition, the new law permits an employer to take action against an employee for transferring proprietary or confidential information or financial data to his or her personal internet account without employer authorization. It also permits an employer to access electronic data that is traveling through or stored on the employer's own computer network (assuming that doing so is otherwise in accordance with state and federal law). Another noteworthy provision recognizes that an employer may require that an employee provide access so that the employer can gain access to or operate a device (like a smartphone) that is paid for at least partly by the employer. In addition, the Act does not restrict an employer from using information about an employee or applicant that lies in the public domain. Similar exclusions and exceptions apply to educational institutions.

WHAT ELSE SHOULD MICHIGAN EMPLOYERS KNOW?

The Internet Privacy Protection Act provides for civil damages of up to \$1,000 and permits the recovery of attorney fees and costs incurred in bringing the civil action. The law defines an "employer" to include a "representative" or "agent" of an employer. Therefore, individuals also may be held liable for violations. In addition to these civil remedies, a person who violates the law can be found guilty of a misdemeanor with a fine punishable by up to \$1,000.

If you have any questions about this post, you may contact Jon Rabin at jrabin@hallrender.com or your regular Hall Render attorney.