

SENATE FILE NO. SF0041

Employee online privacy.

Sponsored by: Joint Corporations, Elections & Political
Subdivisions Interim Committee

A BILL

for

1 AN ACT relating to labor and employment; prohibiting an
2 employer from requesting or requiring access to a personal
3 internet account of an employee or prospective employee;
4 prohibiting an employer from taking adverse action against
5 an employee or prospective employee for failing to disclose
6 information to access a personal internet account;
7 providing exceptions; prohibiting waiver of rights;
8 providing for civil penalties; providing a civil cause of
9 action; providing a definition; and providing for an
10 effective date.

11

12 *Be It Enacted by the Legislature of the State of Wyoming:*

13

14 **Section 1.** W.S. 27-9-109 is created to read:

15

1 **27-9-109. Employee online privacy.**

2

3 (a) An employer shall not request or require any
4 employee or prospective employee to disclose any username,
5 password or other means for viewing or accessing the
6 information contained on an employee's or prospective
7 employee's personal internet account except as provided by
8 paragraph (c)(iii) of this section.

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10 (b) An employer shall not take adverse action, fail
11 to hire or otherwise penalize an employee or prospective
12 employee for failure to disclose information protected
13 under subsection (a) of this section.

14

15 (c) This section does not prohibit an employer from:

16

17 (i) Requesting or requiring an employee to
18 disclose a username, password or other means for accessing
19 an internet account or service provided by the employer,
20 set up by the employee at the employer's request or used
21 primarily for an employer's business purposes;

22

1 (ii) Requesting or requiring an employee to
2 allow viewing of the employee's personal internet account
3 or information contained on the account as cooperation in
4 the employer's work-related investigation if:

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6 (A) The employer is conducting an
7 investigation, based upon receipt of reliable and
8 reasonable information regarding employee misconduct, as
9 defined by W.S. 27-3-102(a), which requires viewing of the
10 employee's personal internet account or information
11 contained on the account;

12
13 (B) The viewing of the employee's personal
14 internet account or information contained on the account is
15 reasonably necessary to make a factual determination in the
16 course of conducting a reasonable investigation;

17
18 (C) The employer does not request, require,
19 suggest or cause the employee to grant access to or
20 disclose information that allows access to the employee's
21 or prospective employee's personal internet account or
22 service; and

23

1 (D) An employer exercising its rights under
2 this paragraph shall use any information obtained through
3 viewing of the employee's personal internet account or
4 information contained on the account only for the purpose
5 of the investigation or a related proceeding.

6

7 (iii) Requesting a personal email address or a
8 connection with a personal internet account for the purpose
9 of enhancing communications with an employee or prospective
10 employee;

11

12 (iv) Viewing information about an employee or
13 prospective employee that is available in the public
14 domain;

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16 (v) Promulgating, maintaining or enforcing
17 lawful workplace policies governing the use of the
18 employer's network or electronic device paid for in whole
19 by the employer, including policies regarding employee use
20 of personal internet accounts;

21

22 (vi) Restricting or prohibiting an employee's
23 access to certain websites while using an account, device

1 or service supplied by, or paid for in whole by, the
2 employer or while using an employer's network or resources;

3

4 (vii) Monitoring, reviewing, accessing or
5 blocking electronic data stored on an electronic
6 communications device supplied by, or paid for in whole by,
7 the employer or stored on an employer's network.

8

9 (d) No employer shall require an employee or
10 prospective employee to waive or limit any protection
11 granted under this section.

12

13 (e) Following a determination pursuant to W.S.
14 27-9-106 that an employer has violated any provision of
15 this section, the department may assess a civil penalty in
16 an amount not to exceed one thousand dollars (\$1,000.00)
17 for the first violation and two thousand five hundred
18 dollars (\$2,500.00) for each subsequent violation.

19

20 (f) An employee or prospective employee may bring a
21 civil action against an employer to enjoin any acts in
22 violation of this section and, if they substantially

1 prevail, may recover damages, reasonable attorney fees and
2 court costs.

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4 (g) For purposes of this section, "personal internet
5 account" means any collection of electronically stored
6 information used or maintained by any employee or
7 prospective employee primarily for personal communications
8 unrelated to the employer's business purposes.

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10 **Section 2.** W.S. 27-9-102(c) and (d), 27-9-104(b) and
11 27-9-105(a) by creating a new paragraph (v) are amended to
12 read:

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14 **27-9-102. Definitions.**

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16 (c) "Unfair employment practice" shall mean those
17 practices specified as discriminatory or unfair in W.S.
18 27-9-105 and 27-9-109.

19

20 (d) As used in W.S. 27-9-101 through ~~27-9-106~~
21 27-9-109, "department" means the department of workforce
22 services and the term "director" means the director of the

1 department or his designee who is authorized to administer
2 W.S. 27-9-101 through ~~27-9-106~~ 27-9-109.

3

4 **27-9-104. Powers and duties of department of**
5 **employment.**

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7 (b) The department shall contract with an independent
8 hearing officer to conduct any hearing under W.S. 27-9-101
9 through ~~27-9-106~~ 27-9-109.

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11 **27-9-105. Discriminatory and unfair employment**
12 **practices enumerated; limitations.**

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14 (a) It is a discriminatory or unfair employment
15 practice:

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17 (v) For an employer or employer's representative
18 to violate any of the provisions of W.S. 27-9-109 regarding
19 disclosure of personal internet account information.

20

21 **Section 3.** This act is effective July 1, 2015.

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(END)