

Laws Target Social Media Privacy

You've heard of employers asking for resumes and references, but Facebook passwords?

A growing number of employers around the country are demanding that current and prospective employees fork over the passwords to their social media profiles. Which begs the question, is such a request an invasion of privacy, or even legal?

According to Graig Zappia, an employment attorney with Tully Rinckey PLLC, it's totally legal, which is why Albany County Legislature Chairman Shawn Morse is pushing for legislation to outlaw the trend.

"I think invading people's privacy is worth protecting and I wanted to do it before it became a problem," said Morse.

Morse's proposed legislation is still in the drafting stages but he said he hopes to introduce it to the legislature in May for a vote in June. It would prohibit any employer in Albany County from asking for or obtaining the password to a current or future employee's social media pages, such as Facebook or Twitter.

"I understand ... that employers certainly have the right to ask for things that are important to them, but when people choose to have their Facebook private I don't think anyone has a right to demand that as part of a hiring process or maintaining your employment," said Morse.

Maryland recently passed legislation banning the practice, Connecticut has taken steps to address the issue and there's a proposed bill idling in the New York State Senate similar in nature to Morse's.

"There's been a firestorm recently on these types of legislation," said Zappia. "All of a sudden it's picked up some steam."

Zappia said he sees both sides of the argument, calling it a "legitimate privacy issue for employees and a legitimate business interest when hiring or maintaining employees in the workplace."

If he was advising an employer, Zappia said he'd caution against using anything found on a personal social networking page to sway an employment decision.

"If you go on these accounts and use information based upon a person's age, race, religion not to hire someone or fire someone, then you're going to open a can of worms," said Zappia. "There's the potential for an employer to go down that slippery slope."

On the other hand, Zappia said there might be times when access to an individual's personal life via his or her online presence might not be out of line.

"I've heard that ... especially in unions for corrections officers as part of security clearance they're asking people for their passwords," said Zappia. "(For) secure background checks this might be the point where privacy rights end."

So what should people do if they're faced with a request for passwords?

"It's a delicate situation and if it's a person that's comfortable with what they have in their Twitter or Facebook accounts and there's nothing truly damaging, you can certainly hand over those passwords and have a clear conscience," said Zappia.

But Morse pointed out sometimes Facebook friends post things on other people's Facebook walls that might make for a tricky situation.

"Should you be denied a job because somebody posts something on your private page that wasn't meant to be an expression of your views or how you feel about something but simply someone else's expression they posted on your page?" said Morse. "There's too much room for perception to become reality. ... It's really dangerous to allow that to become part of the norm."

The National Association of Colleges and Employers, an association that represents about 8,000 college recruiting professionals, is one group to have come out on the issue. It said employers shouldn't require or even request job candidates to provide password information to social network accounts.

"NACE's position is that this practice violates ethical standards," said Executive Director Marilyn Mackes. "We advise college career services professionals to counsel their students that employers do not have a right to require them to provide their login and passwords during the employment recruiting process."

But over the past seven or eight months, that request is becoming more and more commonplace in the Capital District, said Morse.

"I've been hearing about it ... but like everybody else, you hear things," said Morse. "Then when I was having meetings with people and they were talking about how they don't think it's a bad idea I thought, 'Wow, this is really real and not just happening in other parts of the country,'" said Morse.

Zappia said until formal legislation comes along, with the tough job climate, employees and job seekers should use their best judgment if faced with this conundrum.

"I lean on the side of employees saying I think it's just overstepping of the employer, but at this point they can request it ... and if they don't comply with that request I'd hate to see someone lose their job over it," said Zappia.