



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2013 Wisconsin Act 208
[2013 Senate Bill 223]

Social Media Account Access

2013 Wisconsin Act 208 relates to employer access to, and observation of, the personal Internet accounts of employees and applicants for employment; educational institution access to, and observation of, the personal Internet accounts of students and prospective students; and landlord access to, and observation of, the personal Internet accounts of tenants and prospective tenants.

PROHIBITED ACCESS TO PERSONAL INTERNET ACCOUNTS

Act 208 specifies that certain actions by an employer, educational institution, or landlord in accessing a person's personal Internet accounts are prohibited and may be subject to a forfeiture and enforcement by the Department of Workforce Development (DWD). Under the Act, a "personal Internet account" is an Internet-based account that is created and used by an individual exclusively for purposes of personal communications.

The Act explicitly states that its provisions do not create a duty for an employer, educational institution, or landlord to search or monitor the activity of a personal Internet account. Likewise, under the Act, an employer, educational institution, or landlord is not liable for any failure to request or to require access or observation of a personal Internet account.

Employer

The Act specifies that, with exceptions, an employer may not request or require an employee or applicant to disclose access information, grant access, or allow observation, of a personal Internet account, as a condition of employment. An employer is also prohibited from discharging or otherwise discriminating against a person who refuses such a request or opposes such practices.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.wisconsin.gov>.

Under the exceptions, an employer may do any of the following:

- Discharge or discipline an employee for transferring proprietary or confidential information, or financial data, to the employee's personal Internet account without authorization.
- Conduct an investigation of certain misconduct, if the employer has reasonable cause to believe that activity in the personal Internet account relating to the misconduct has occurred. Misconduct includes: any alleged unauthorized transfer of proprietary or confidential information, or financial data; any other alleged employment-related misconduct; any violation of the law; or any violation of the employer's work rules as specified in an employee handbook. In conducting an investigation, an employer may require an employee to grant access or allow observation of a personal Internet account, but may not require the employee to disclose access information for that account.
- Restrict or prohibit a person's access to certain Internet sites while using a device or network that is supplied or paid for in whole or in part by the employer.
- Request or require access to a device, account, or service that is supplied or paid for in whole or in part by the employer, which is provided by virtue of the employment relationship or is used for the employer's business purposes.
- View, access, or use information about an employee or applicant that is available in the public domain or that can be viewed without access information.
- Request or require disclosure of an employee's personal email address.

Additionally, the Act does not prevent an employer in the securities industry from complying with regulations relating to applicant screening and business oversight.

Lastly, an employer that inadvertently obtains access information, through use of the employer's network or use of a device that is supplied or paid for in whole or in part by the employer, is not liable for possessing that information so long as the information is not used to access the employee's personal Internet account.

Educational Institution

The Act specifies that, with exceptions, an educational institution may not request or require a student or prospective student to disclose access information, grant access, or allow observation, of a personal Internet account, as a condition of admission or enrollment. An educational institution is also prohibited from refusing to admit, expelling, suspending, or otherwise disciplining a person who refuses such a request or opposes such practices.

For purposes of the Act, an "educational institution" includes a college, university, technical college, public school, charter school, private school, and a private educational testing service.

Under the exceptions, an educational institution may request or require access to a device, account, or service that is supplied or paid for in whole or in part by the educational institution, which is provided by virtue of the student's admission to the institution or is used

for educational purposes. An educational institution may also view, access, or use information about a student or prospective student that is available in the public domain or that can be viewed without access information.

Landlord

The Act specifies that a landlord may not request or require a tenant or prospective tenant to disclose access information, grant access, or allow observation, of a personal Internet account, as a condition of tenancy. A landlord is also prohibited from discriminating against a tenant or prospective tenant who refuses such a request or opposes such practices.

Under the Act, a landlord may view, access, or use information about a tenant or prospective tenant that is available in the public domain or that can be viewed without access information.

PENALTIES AND REMEDIES

The Act specifies that an employer, educational institution, or landlord who violates a person's privacy rights in a personal Internet account is subject to a forfeiture of up to \$1,000. Additionally, a person who has been discharged, expelled, disciplined, or otherwise discriminated against in violation of the Act may file a complaint with DWD, which may take action to remedy the violation in the same manner as employment or housing discrimination complaints.

Effective date: 2013 Wisconsin Act 208 took effect April 10, 2014. If an employee is affected by a collective bargaining agreement that contains provisions that are inconsistent with Act 208, the Act is effective when the collective bargaining agreement expires, or is extended, modified, or renewed.

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