ALICE Model User Name and Password Privacy Protection Act[1]

Rationale: Employees increasingly face a new form of privacy violation from prospective and current employers, namely demands that they share passwords on personal sites such as their social networking accounts. Such demands threaten to erode and even break basic divisions between work and personal life in ways that obliterate the privacy of employees. These intrusions not only threaten privacy, but also revealing religious, ethnic or other information about candidates and employees may increase the likelihood of other discriminatory action against an employee.

Summary: This [act] prohibits an employer from requesting or requiring that an employee or applicant disclose any user name, password, or other means for accessing a personal account or service through specified electronic communications devices; prohibits an employer from taking, or threatening to take, specified disciplinary actions for an employee's refusal to disclose specified password and related information; and details procedures for administrative agencies and employees to enforce its provisions and specifies financial penalties.

SECTION 1. SHORT TITLE. User Name and Password Privacy Protection Act

SECTION 2. DEFINITIONS. In this section the following words have the meanings indicated.

(1) "Applicant" means an applicant for employment.

(2) "Electronic communications device" means any device that uses electronic signals to create, transmit, and receive information, including but not limited to computers, telephones, personal digital assistants, and other similar devices.

(3) "Employer":

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[1] This model was drafted by ALICE staff. ALICE would like to thank all those who provided feedback on this draft.

(a) means a person engaged in a business, an industry, a profession, a trade, or other enterprise in the state; or

(b) means a unit of state or local government; and

(c) includes an agent, a representative, and a designee of the employer.

(4) "Social networking website" means an Internet-based service that allows individuals to:

(a) construct a public or semi-public profile within a bounded system created by the service;

(b) create a list of other users with whom they share a connection within the system; and

(c) view and navigate their list of connections and those made by others within the system.

SECTION 3. USER NAME AND PASSWORD PRIVACY

(a) An employer may not:

(1) Request or require that an employee or applicant disclose any user name, password, or other means for accessing a personal account, social networking profile or service through an electronic communications device.

(2) Require or request that employee or applicant log onto a social networking site, email account, or any other internet site or application by way of an electronic communication device in the presence of an agent of the employer so as to provide the employer access.

(3) Request or require an employee or applicant to add the employer to their personal social networking site profile or account.

(4) Access an employee's or applicant's social networking site profile or account indirectly through any other person who is a social networking contact of the student or applicant.

(5) Request or require an employee to divulge any personal social media information or social media information about other employees or applicants.

(b) An employer may require an employee to disclose any user name, password, or other means for accessing nonpersonal accounts, social networking profiles or services that provide access to the employer's computer, networking or information systems.

(c) An employer may not:

(1) discharge, discipline, or otherwise penalize or threaten to discharge, discipline, or otherwise penalize an employee for an employee's refusal to disclose any information specified in subsection (a) of this section; or

(2) fail or refuse to hire any applicant as a result of the applicant's refusal to disclose any information specified in subsection (a) of this subsection.

SECTION 4. INVESTIGATIVE AUTHORITY. To ensure compliance with the provisions of this title or any regulation or order issued under this title, the [title of labor or EEO official)] shall have the investigative authority to enter employer workplaces, interview witnesses and examine all employer records related to allegations of violations of section 3.

SECTION 5. ENFORCEMENT.

 (a) Civil action by individual

(1) Liability for employers and employment agencies—Any employer or employment agency that violates Section 3 shall be liable to any affected individual

(A) for actual damages equal to:

(i) the amount of:

(I) any wages, salary, employment benefits, or other compensation denied or lost to such individual by reason of the violation; or

(II) in a case in which wages, salary, employment benefits, or other compensation have not been denied or lost to the individual, any actual monetary losses sustained by the individual as a direct result of the violation or damages in the amount of $500 per violation per day, whichever is greater.

(ii) the interest on the amount described in clause (i) calculated at the prevailing rate; and

(iii) an additional amount as liquidated damages equal to the sum of the amount described in clause (i) and the interest described in clause (ii), except that if an employer or employment agency that has violated Section 3 proves to the satisfaction of the court that the act or omission that violated Section 3 was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of Section 3, such court may, in its discretion, reduce the amount of the liability to the amount and interest determined under clauses (i) and (ii), respectively; and

(B) for such equitable relief as may be appropriate, including employment and compensatory and punitive damages.

(2) Right of action. An action to recover the damages or equitable relief prescribed in paragraph (1) of this subsection may be maintained against any employer or employment agency in any (state court) by any one or more persons for and in behalf of--

(A) the affected individual; or

(B) the affected individual and other individuals similarly situated.

(3) Fees and costs. The court in such an action shall, in addition to any judgment awarded to the plaintiff, allow a reasonable attorney's fee, reasonable expert witness fees, and other costs of the action to be paid by the defendant.

(b) Action by [the Labor or EEO Official]

(1) Administrative action. [The Labor or EEO Official] shall receive, investigate, and attempt to resolve complaints of violations of section 3 [under state law authority for labor (wage/state FMLA) or EEO complaints.]

(2) Civil action. The [Labor or EEO Official] may bring an action in any state court of competent jurisdiction:

(A) to enjoin violations of this title and seek other relief going forward necessary to prevent future violations;

(B) to recover the damages described in subsection (a)(1)(A) above;

(C) in the case of a violation of Section 4(c)-(e), a civil penalty of not less than $250 per violation; or

(D) to seek any other equitable relief the Court deems appropriate.

[Policy Option: *Administrative and Hearing Decision*.[2]]

(3) Sums recovered. Any sums recovered by the [Labor or EEO Official] pursuant to paragraph (2)(A) shall be held in a special deposit account and shall be paid, on order of the Secretary, directly to each employee affected. Any such sums recovered pursuant to paragraph (2)(A) that are not paid to an employee because of inability to do so within a period of 3 years and any sums recovered pursuant to paragraph (2)(B) shall be deposited into the Treasury of the [State] as miscellaneous receipts.

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[2] [The Labor or EEO] official may conduct a hearing pursuant to authority and procedures under state administrative procedure act and issue a final decision, which may be appealed in accordance with [state Administrative Procedure Act.]

SOURCE LAWS.

Maryland Chapter 234 (2012) – http://alicelaw.org/catalog/638

Illinois PA 097-0875 (2012) - http://alicelaw.org/catalog/785