

1 STATE OF OKLAHOMA

2 1st Session of the 55th Legislature (2015)

3 HOUSE BILL 1877

By: Roussetot

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6 AS INTRODUCED

7 An Act relating to labor; amending Section 1, Chapter  
8 315, O.S.L. 2014 (40 O.S. Supp. 2014, Section 173.2),  
9 which relates to employer access to online social  
10 media accounts of employees; providing exception; and  
11 providing an effective date.

12 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

13 SECTION 1. AMENDATORY Section 1, Chapter 315, O.S.L.  
14 2014 (40 O.S. Supp. 2014, Section 173.2), is amended to read as  
15 follows:

16 Section 173.2 A. No employer, as defined by paragraph 1 of  
17 Section 1301 of Title 25 of the Oklahoma Statutes, located in this  
18 state shall:

19 1. Require an employee or prospective employee to disclose a  
20 user name and password or other means of authentication for  
21 accessing a personal online social media account through an  
22 electronic communications device;

23 2. Require an employee or prospective employee to access the  
24 employee's or prospective employee's personal online social media

1 account in the presence of the employer in a manner that enables the  
2 employer to observe the contents of such accounts if the account's  
3 contents are not available to the general public, except pursuant to  
4 an investigation as provided in subsection D of this act;

5 3. Take retaliatory personnel action that materially and  
6 negatively affects the terms and conditions of employment against an  
7 employee solely for refusal to give the employer the user name or  
8 password to the employee's personal online social media account; or

9 4. Refuse to hire a prospective employee solely as a result of  
10 the prospective employee's refusal to give the employer the user  
11 name and password to the prospective employee's personal online  
12 social media account.

13 B. An employer may request or require an employee to disclose  
14 any user name and password for accessing:

15 1. Any computer system, information technology network, or  
16 electronic communications device provided or subsidized by the  
17 employer; or

18 2. Any accounts or services provided by the employer or by  
19 virtue of the employee's employment relationship with the employer  
20 or that the employee uses for business purposes.

21 C. If, through the use of an electronic device or program that  
22 monitors an employer's network or the use of employer provided  
23 devices, an employer inadvertently receives an employee's user name  
24 and password or other authentication information, the employer is

1 not liable for having such information, but may not use the  
2 information to access an employee's personal online social media  
3 account.

4 D. Nothing in this section shall prevent an employer from:

5 1. Conducting an investigation:

- 6 a. for the purpose of ensuring compliance with applicable  
7 laws, regulatory requirements or prohibitions against  
8 work-related employee misconduct based on the receipt  
9 of specific information about activity on a personal  
10 online social media account or personal online social  
11 media service by an employee or other source, or
- 12 b. of an employee's actions based on the receipt of  
13 specific information about the unauthorized transfer  
14 of an employer's proprietary information, confidential  
15 information or financial data to a personal online  
16 social media account or personal online social media  
17 service by an employee or other source;

18 2. Conducting an investigation as specified in subparagraphs a  
19 and b of paragraph 1 of this subsection ~~includes~~ requiring the  
20 employee's cooperation to share the content that has been reported  
21 in order to make a factual determination.

22 E. Nothing in this section shall be construed to prevent an  
23 employer from complying with the requirements of state or federal  
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1 statutes, rules or regulations, case law, or rules of self-  
2 regulatory organizations.

3 F. Nothing in this section shall be construed to prohibit an  
4 employer from accessing its computer system or information  
5 technology network, including electronic communications devices  
6 owned by the employer. Neither this section nor any other Oklahoma  
7 law shall prohibit an employer from reviewing or accessing personal  
8 online social media accounts that an employee may choose to use  
9 while utilizing an employer's computer system, information  
10 technology network or an employer's electronic communication device.

11 G. An employee or prospective employee may bring a civil action  
12 against an employer who violates this section in a court located in  
13 the county in which the alleged violation occurred. Such action  
14 shall be brought within six (6) months after the alleged violation  
15 occurred. The employee or prospective employee may seek injunctive  
16 relief to restrain the employer from continuing to act in violation  
17 of this section, but must show by clear and convincing evidence that  
18 the employer violated this act. The only damages recoverable for a  
19 violation of this act are Five Hundred Dollars (\$500.00) per  
20 violation. No punitive or emotional damages are recoverable, and  
21 this section may not be utilized for the basis of a public policy  
22 tort.

23 H. As used in this section:  
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1       1. "Electronic communications device" means a device that uses  
2 electronic signals to create, transmit or receive information,  
3 including computers, telephones, personal digital assistants and  
4 other similar devices; and

5       2. "Personal online social media account" means an online  
6 account that is used by an employee or prospective employee  
7 exclusively for personal communications that an individual  
8 establishes and uses through an electronic application, service or  
9 platform used to generate or store content, including, but not  
10 limited to, videos, still photographs, blogs, video blogs, instant  
11 messages, audio recordings or email that is not available to the  
12 general public.

13       I. Nothing in this section shall apply to law enforcement  
14 agencies performing preemployment background checks on prospective  
15 employees.

16       SECTION 2. This act shall become effective November 1, 2015.

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18       55-1-5674       LRB       01/07/15  
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