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## Too Ashamed To Show Your “Facebook”? New Jersey’s Proposal to Ban Employee Access

By: *Emily J. Bordens*

On September 20, 2012, New Jersey’s Senate Labor Committee voted in favor of the two-bill package, S-1898/S-1915,<sup>1</sup> nicknamed the “Facebook bill,” which would make it unlawful for an employer to require employees, as a condition of employment (or prospective applicants) to provide access to their social media accounts. If this bill passes, New Jersey would join Maryland and Illinois, states with similar laws.

This potential law would prevent companies from requesting access to an employee’s social media profiles during an interview or as part of the employment relationship. Additionally, employees would be protected from retaliation or discrimination should they (1) refuse to disclose their password or log-in information; (2) file a complaint pursuant to this bill; or (3) testify, assist or participate in any investigation concerning a violation of this law. Employers would even be prohibited from requiring or requesting that the employee disclose whether he or she has a social media account. Likewise, any agreement to waive the employee’s rights under this proposed legislation would be unenforceable.

Employers should pay particular attention to this proposed legislation because it provides for a private cause of action for appropriate damages and injunctive relief, including attorneys’ fees. Employees aggrieved by the potential bill can also file a complaint with the New Jersey Department of Labor and Workforce Development, which would be authorized to impose civil penalties of \$1,000 for the first violation or \$2,500 for each subsequent violation.

**The Bottom Line.** Employers should be aware of this potential legislation. We will continue to monitor and provide updates as this bill moves through the New Jersey legislature. Employers should keep in mind, however, that this potential bill would not prevent examination of publicly-available online content (information that is not password-protected) as part of the application process or a workplace investigation. ■

<sup>1</sup> This proposed legislation will be merged with A-2878, a similar version that passed the Assembly in a 76-1 vote in June.

*For more information about these or any other topics in Labor and Employment Law, please contact:*

*Jed L. Marcus  
jmarcus@bressler.com  
973.966.9678*

*Cynthia J. Borrelli  
cborrelli@bressler.com  
973.966.9685*

*Robert Novack  
rnovack@bressler.com  
973.660.4477*

*Stephen R. Knox  
sknox@bressler.com  
973.245.0684*

*Michael T. Hensley  
mhensley@bressler.com  
973.660.4473*

*Tracey Salmon-Smith  
tsmith@bressler.com  
973.660.4422*

*Andrée Peart Laney  
alaney@bressler.com  
973.245.0686*

*Charles W. Stotter  
cstotter@bressler.com*

*Emily J. Bordens  
ebordens@bressler.com  
973.660.4470*

*Dennis Kadian  
dkadian@bressler.com  
973.660.4456*

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