

# Lawmakers target social media rules

House Bill 2654 would prohibit Oregon employers from requiring access to personal accounts

In today's world, social media is a way of life; Facebook touts that it has more than 1 billion active accounts, Twitter touts that it has more than 550 million users, and LinkedIn claims it has more than 225 million members. According to a Feb. 14 study by the Pew Research Center's Internet and American Life Project, 67 percent of Internet users also use social networking sites.

Employees and applicants who use social media divulge personal information about themselves and their activities, and that often is sought by employers when making important employment decisions. In an effort to increase privacy protections, state legislatures have rushed to ban employers from accessing social media accounts; in 2012 nine states passed applicable legislation. Under current law, an Oregon employer may still require employees and applicants to provide access to their personal social media accounts, but that is likely to change soon.

On May 16, the Oregon Legislature passed House Bill 2654, which would make it an unlawful employment practice for employers to require an employee or applicant to provide access to the individual's personal social media account, request the individual access the account in the employer's presence, or direct an employee to add the employer as a contact or friend. HB 2654 also prohibits



## COMPLIANCE CORNER

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employers from disciplining employees for refusing to provide access to personal social media accounts and grants employees or applicants the right to file a lawsuit against the employer for violations of the law.

HB 2654 identifies certain circumstances under which an unlawful employer practice does not arise. First, if an employer receives a complaint of harassment or other employee misconduct, an employer may investigate the complaint by directing an employee to share content from a personal social media account, so long as the complaint indicates that a social media account is somehow involved. Even under these circumstances, the employer is still prohibited from demanding unfettered access to the personal social media account.

Second, separate from any investigation, if an employee's or applicant's social media account allows members of the public to view their full profile, an employer is free to access the account.

Lastly, employers are not liable for unlawful employment practice for inadvertently receiving information that would provide access to a

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personal social media account. This may be possible, for example, if an employer is monitoring usage of an employee's Internet activity during work time on the employer's network.

Even with these specific guidelines, HB 2654 is likely to present several challenges for employers. For example, the bill defines social media broadly to include any electronic medium that allows users to create, share or view user-generated content through email, the Internet or other means. Based on this definition, all electronic content or activity on the Internet is included, not just an individual's Facebook page, Twitter feed or LinkedIn account, and will likely result in unintended consequences.

Second, HB 2654 defines social media accounts as either personal or employer accounts; however, the bill fails to define a personal account versus an employer account. The ownership of social media accounts is a hotly litigated topic.

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followers fit the definition of customer lists. If the contacts are customer lists, trade secret laws provide the employer with the right to protect customer lists from use by former employees. If an employer expects to benefit from an employee's use of social media, such as networking via LinkedIn, the employee should be instructed to establish a new social media account for business purposes with an agreement that the account belongs to the employer.

In preparing for the likely passage of HB 2654, employers should review their social media policies and add a statement of intent to comply. As a general reminder, any social media policy should clearly outline the employer's expectations of how employees will use social media, warn employees that their conduct on social media sites may be subject to discipline, establish the parameters of whether use of employer equipment to access social media accounts is authorized, and identify ownership of the accounts.

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## SUB-BIDS REQUESTED

### West Linn Police Department

Skanska Contact/phone/email: Jason TenBrook 503-382-0900

[Jason.tenbrook@skanska.com](mailto:Jason.tenbrook@skanska.com)

**BID DATE and TIME: Wednesday, June 5th at 3:00pm**

Description: Skanska is requesting bids for the build-out of approximately 20,000 sf for the new West Linn Police Dept. located on the SW corner of 13th St. & 8th Ave. in West Linn, OR.

Addendum #1 has been issued.

# SKANSKA

Skanska is an equal opportunity employer and actively requests bids from Minority, Women, Disadvantaged, and Emerging Small Business Enterprises

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OR CCB # 153980