July 11, 2016

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Twenty-Eighth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Joseph M. Souki,
Speaker
and Members of the House
Twenty-Eighth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Kouchi, Speaker Souki, and Members of the Legislature:

I am transmitting herewith HB1739 HD2 SD1 CD1, without my approval, and with the
statement of objections relating to the measure.

HB1739 HD2 SD1 CD1 RELATING TO EMPLOYMENT

Sincerely,

[Signature]

DAVID Y. IGE
Governor, State of Hawaii
Pursuant to Section 16 of Article III of the Constitution of the State of Hawai‘i, I am returning herewith, without my approval, House Bill No. 1739, entitled "A Bill for an Act Relating to Employment."

The purpose of this bill is to prohibit employers from requiring, requesting, or coercing employees or potential employees to provide access to their personal social media accounts, subject to certain exemptions.

While the intent of this bill is laudable, it is nonetheless objectionable because it contains no provisions for enforcement authority or due process. The bill simply states, in section 1 subsection (f), that "an employer found in violation of this part shall be subject to a fine of not less than $25 and not more than $100, to be collected by the director of labor and industrial relations; and the fine shall not be suspended."

Though the Department of Labor and Industrial Relations is the department best suited to administer this measure, the Department, its divisions or attached agencies do not currently have the staff, resources, or expertise to administer this measure including, but not limited to: intake of complaints, determination of violations, education of rights, determination and collection of fines, and administrative review. The Department has no data as to the number of cases occurring currently or in the past and is struggling with case backlogs in other areas without taking on the enactment and enforcement of this measure.

Additionally, the Legislature has provided for no funding, either in this bill, nor the budget, to determine standards and methods of administration of the bill, for staff positions or administrative costs that would be required to implement the provisions of this measure.
For the foregoing reasons, I am returning House Bill No. 1739 without my approval.

Respectfully,

DAVID Y. IGE
Governor of Hawai'i
A BILL FOR AN ACT

RELATING TO EMPLOYMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Chapter 378, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . EMPLOYEE PERSONAL SOCIAL MEDIA

§378- Employer access to employee or potential employee personal accounts prohibited. (a) An employer shall not:

(1) Require, request, or coerce an employee or potential employee to disclose the username, password, or any other information for the purpose of accessing the employee's or potential employee's personal account;

(2) Require, request, or coerce an employee or potential employee to provide access to the employee's or potential employee's personal account in the presence of the employer; or

(3) Coerce or compel an employee or potential employee to add anyone, including the employer, to the employee's or potential employee's list of contacts associated with a personal account.


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(b) Nothing in this section shall prevent an employer from:

(1) Accessing information about an employee or potential employee that is publicly available;

(2) Complying with applicable laws, rules, or regulations;

(3) Requiring an employee to disclose a username or password or similar authentication information for the purpose of accessing:

(A) An employer-issued electronic device; or

(B) An account or service provided by the employer, obtained by virtue of the employee's employment relationship with the employer, or used for the employer's business purposes;

(4) Conducting an investigation or requiring an employee to cooperate in an investigation, including by requiring an employee to share the content that has been reported to make a factual determination, if the employer has specific information about an unauthorized transfer of the employer's proprietary information, confidential information, or financial data, to an employee's personal account;
(5) Prohibiting an employee or potential employee from using a personal account during employment hours, while on employer time, or for business purposes; or

(6) Requesting or requiring an employee to share content regarding a personal account necessary to ensure compliance with applicable laws, regulatory requirements, or prohibitions against work-related employee misconduct.

(c) If an employer inadvertently receives the username, password, or any other information that would enable the employer to gain access to the employee's or potential employee's personal account through the use of lawful technology that monitors the employer's network or employer-provided devices for network security or data confidentiality purposes, then the employer is not liable for having that information; provided that the employer:

(1) Does not share that information with a person who uses that information to access the employee's or potential employee's personal account; and
(2) Does not use that information, or enable a third party to use that information, to access the employee's or potential employee's personal account.

(d) Nothing in this section shall diminish the authority and obligation of an employer to investigate complaints, allegations, or the occurrence of sexual, racial, or other harassment as provided under this chapter.

(e) As used in this section, "personal account" means an account, service, or profile on a social networking website that is used by an employee or potential employee exclusively for personal communications unrelated to any business purposes of the employer.

(f) An employer found in violation of this part shall be subject to a fine of not less than $25 and not more than $100, to be collected by the director of labor and industrial relations; and the fine shall not be suspended."

SECTION 2. This Act shall take effect upon its approval.

APPROVED this day of 2016

GOVERNOR OF THE STATE OF HAWAII