

1 (2) School employees and agents acting under the authority
2 or on behalf of an educational institution; and

3 (3) Any state or local educational agency authorized to
4 direct or control an entity described in paragraph (1)
5 of this definition.

6 "Electronic" means relating to technology having
7 electrical, digital, magnetic, wireless, optical,
8 electromagnetic, or similar capabilities.

9 "Employee" means an individual who provides services or
10 labor to an employer in exchange for salary, wages, or other
11 remuneration or compensation.

12 "Employer" means a person that provides salary, wages, or
13 the equivalent to an employee in exchange for services or labor.
14 The term includes an agent or designee of the employer acting
15 under the authority or on behalf of an employer.

16 "Personal online account" means any online account
17 maintained by an employee or student, including social media or
18 electronic mail accounts, that is protected by a login
19 requirement. The term does not include an account, or the
20 discrete portion of an account, that was:



1 (1) Opened at an employer's behest, or provided by an
2 employer and intended to be used solely or primarily
3 on behalf of or under the direction of the employer;
4 or

5 (2) Opened at an educational institution's behest, or
6 provided by an educational institution and intended to
7 be used solely or primarily on behalf of or under the
8 direction of the educational institution.

9 "Prospective student" means an applicant for admission to
10 an educational institution.

11 "Publicly available" means available to the general public.

12 "Specifically identified content" means data or information
13 on a personal online account that is identified with sufficient
14 particularity to:

15 (1) Demonstrate prior knowledge of the content's details;
16 and

17 (2) Distinguish the content from other data or information
18 on the account with which it may share similar
19 characteristics.



1 "Student" means any full-time or part-time student,
2 participant, or trainee who is enrolled in a class or any other
3 organized course of study at an educational institution.

4 § -3 Protection of employee or applicant online account.

5 (a) Subject to the exceptions in subsection (b), an employer
6 shall not:

7 (1) Require, coerce, or request an employee or applicant
8 to:

9 (A) Disclose the user name and password, password, or
10 any other means of authentication, or to provide
11 access through the user name or password, to a
12 personal online account;

13 (B) Disclose the non-public content of a personal
14 online account;

15 (C) Provide password or authentication information to
16 a personal technological device for the purpose
17 of gaining access to a personal online account,
18 or turn over an unlocked personal technological
19 device for the purpose of gaining access to a
20 personal online account;



- 1 (D) Alter the settings of the personal online account
2 in a manner that makes the content of the
3 personal online account more accessible to
4 others; or
- 5 (E) Access the personal online account in the
6 presence of the employer in a manner that enables
7 the employer to observe the content of the
8 account;
- 9 (2) Require or coerce an employee or applicant to add
10 anyone, including the employer, to the employee's or
11 applicant's list of contacts associated with a
12 personal online account;
- 13 (3) Take, or threaten to take, adverse action against an
14 employee or applicant for failure to comply with an
15 employer requirement, coercive action, or request that
16 violates paragraph (1); or
- 17 (4) Fail or refuse to admit any applicant as a result of
18 the applicant's refusal to disclose any information or
19 take any action specified in paragraph (1).
- 20 (b) Nothing in subsection (a) shall prevent an employer
21 from:



- 1 (1) Accessing information about an employee or applicant
- 2 that is publicly available;
- 3 (2) Complying with a federal or state law, court order, or
- 4 rule of a self-regulatory organization established by
- 5 federal or state statute, including a self-regulatory
- 6 organization as defined in section 3(a)(26) of the
- 7 Securities Exchange Act of 1934 (15 U.S.C.
- 8 78c(a)(26));
- 9 (3) Without requesting or requiring an employee or
- 10 applicant to provide a user name and password,
- 11 password, or other means of authentication that
- 12 provides access to a personal online account,
- 13 requiring or requesting an employee or applicant to
- 14 provide specifically identified content that has been
- 15 reported to the employer for the purpose of:
- 16 (A) Enabling the employer to comply with legal and
- 17 regulatory obligations;
- 18 (B) Investigating an allegation, based on the receipt
- 19 of information regarding specifically identified
- 20 content, of the unauthorized transfer of an
- 21 employer's proprietary or confidential



1 information or financial data to an employee's or
2 applicant's personal online account;

3 (C) Investigating an allegation, based on the receipt
4 of information regarding specifically identified
5 content, of unlawful harassment or threats of
6 violence in the workplace; or

7 (D) Protecting against a threat to safety, employer
8 information technology, communications technology
9 systems, or employer property;

10 (4) Prohibiting an employee or applicant from using a
11 personal online account for business purposes; or

12 (5) Prohibiting an employee or applicant from accessing or
13 operating a personal online account during business
14 hours or while on business property.

15 (c) An employer that accesses employee or applicant
16 content for a purpose specified in subsection (b) (3):

17 (1) Shall attempt reasonably to limit its access to
18 content that is relevant to the specified purpose;

19 (2) Shall use the content only for the specified purpose;
20 and



1 (3) Shall not alter the content unless necessary to
2 achieve the specified purpose.

3 (d) An employer that inadvertently receives the user name
4 and password, password, or other means of authentication that
5 provides access to an employee's or applicant's personal online
6 account by means of otherwise lawful technology that monitors
7 the employer's network, or employer-provided devices, for a
8 network security, data confidentiality, or system maintenance
9 purpose:

10 (1) Is not liable for having the information;

11 (2) Shall not use the information to access the personal
12 online account of the employee or applicant or share
13 the information with any other person or entity;

14 (3) Shall make a reasonable effort to keep the login
15 information secure;

16 (4) Unless otherwise provided in paragraph (5), shall
17 dispose of the information as soon as, as securely as,
18 and to the extent reasonably practicable; and

19 (5) Shall, if the employer retains the information for use
20 in connection with the pursuit of a specific criminal
21 complaint or civil action, or the investigation



1 thereof, make a reasonable effort to keep the login
2 information secure and dispose of it as soon as, as
3 securely as, and to the extent reasonably practicable
4 after completing the investigation.

5 (e) Nothing in this chapter shall diminish the authority
6 and obligation of an employer to investigate complaints,
7 allegations, or the occurrence of sexual, racial, or other
8 prohibited harassment under chapter 378.

9 § -4 Protection of student or prospective student online
10 account. (a) Subject to the exceptions in subsection (b), an
11 educational institution shall not:

12 (1) Require, coerce, or request a student or prospective
13 student to:

14 (A) Disclose the user name and password, password, or
15 any other means of authentication, or to provide
16 access through the user name or password, to a
17 personal online account;

18 (B) Disclose the non-public content of a personal
19 online account;

20 (C) Provide password or authentication information to
21 a personal technological device for the purpose



1 of gaining access to a personal online account,
2 or turn over an unlocked personal technological
3 device for the purpose of gaining access to a
4 personal online account;

5 (D) Alter the settings of the personal online account
6 in a manner that makes the content of the
7 personal online account more accessible to
8 others; or

9 (E) Access the personal online account in the
10 presence of the educational institution employee
11 or educational institution volunteer, including a
12 coach, teacher, or school administrator, in a
13 manner that enables the educational institution
14 employee or educational institution volunteer to
15 observe the content of the account;

16 (2) Require or coerce a student or prospective student to
17 add anyone, including a coach, teacher, school
18 administrator, or other educational institution
19 employee or educational institution volunteer, to the
20 student's or prospective student's list of contacts
21 associated with a personal online account;



- 1 (3) Take, or threaten to take, adverse action against a
2 student or prospective student, including discharge,
3 discipline, prohibition from participation in
4 curricular or extracurricular activities, for failure
5 to comply with an educational institution requirement,
6 coercive action, or request that violates paragraph
7 (1);
- 8 (4) Fail or refuse to admit any prospective student as a
9 result of the prospective student's refusal to
10 disclose any information or take any action specified
11 in paragraph (1).
- 12 (b) Nothing in subsection (a) shall prevent an educational
13 institution from:
- 14 (1) Accessing information about a student or prospective
15 student that is publicly available;
- 16 (2) Complying with a federal or state law, court order, or
17 rule of a self-regulatory organization established by
18 federal or state statute, including a self-regulatory
19 organization as defined in section 3(a)(26) of the
20 Securities Exchange Act of 1934 (15 U.S.C.
21 78c(a)(26));



- 1 (3) Without requesting or requiring a student or
2 prospective student to provide a user name and
3 password, password, or other means of authentication
4 that provides access to a personal online account,
5 requiring or requesting a student or prospective
6 student to provide specifically identified content
7 that has been reported to the educational institution
8 for the purpose of:
- 9 (A) Enabling the educational institution to comply
10 with legal and regulatory obligations;
- 11 (B) Investigating an allegation, based on the receipt
12 of information regarding specifically identified
13 content, of the unauthorized transfer of an
14 educational institution's proprietary or
15 confidential information or financial data to a
16 student's or prospective student's personal
17 online account;
- 18 (C) Investigating an allegation, based on the receipt
19 of information regarding specifically identified
20 content, of noncompliance with an educational
21 institution prohibition against education-related



1 student misconduct of which the student has
2 reasonable notice, which is in a record, and that
3 was not created primarily to gain access to a
4 personal online account; or

5 (D) Protecting against a threat to safety,
6 educational institution information technology,
7 communications technology systems, or educational
8 institution property;

9 (4) Prohibiting a student or prospective student from
10 using a personal online account for educational
11 institution purposes; or

12 (5) Prohibiting a student or prospective student from
13 accessing or operating a personal online account
14 during school hours or while on school property.

15 (c) An educational institution that accesses student or
16 prospective student content for a purpose specified in
17 subsection (b) (3):

18 (1) Shall attempt reasonably to limit its access to
19 content that is relevant to the specified purpose;

20 (2) Shall use the content only for the specified purpose;

21 and



1 (3) Shall not alter the content unless necessary to
2 achieve the specified purpose.

3 (d) An educational institution that inadvertently receives
4 the user name and password, password, or other means of
5 authentication that provides access to a student's or
6 prospective student's personal online account by means of
7 otherwise lawful technology that monitors the educational
8 institution's network, or educational institution-provided
9 devices, for a network security, data confidentiality, or system
10 maintenance purpose:

11 (1) Is not liable for having the information;

12 (2) Shall not use the information to access the personal
13 online account of the student or prospective student
14 or share the information with any other person or
15 entity;

16 (3) Shall make a reasonable effort to keep the information
17 secure;

18 (4) Unless otherwise provided in paragraph (5), shall
19 dispose of the information as soon as, as securely as,
20 and to the extent reasonably practicable; and



1 (5) Shall, if the educational institution retains the
2 information for use in connection with the pursuit of
3 a specific criminal complaint or civil action, or the
4 investigation thereof, make a reasonable effort to
5 keep the information secure and dispose of it as soon
6 as, as securely as, and to the extent reasonably
7 practicable after completing the investigation.

8 § -5 **Enforcement.** (a) The attorney general may bring a
9 civil action in district court against an employer or
10 educational institution for a violation of this chapter. A
11 prevailing attorney general may obtain:

12 (1) Injunctive and other equitable relief; and
13 (2) A civil penalty of up to \$1,000 for each violation,
14 but not exceeding \$100,000 for all violations caused
15 by the same event.

16 (b) An employee, applicant, student, or prospective
17 student may bring a civil action in district court against the
18 individual's employer or educational institution for a violation
19 of this chapter. A prevailing employee, applicant, student, or
20 prospective student may obtain:

21 (1) Injunctive and other equitable relief;



1 (2) Actual damages; and

2 (3) Costs and reasonable attorney's fees.

3 (c) An employee or agent of an educational institution who
4 violates this Act may be subject to disciplinary proceedings and
5 punishment. For educational institution employees who are
6 represented under the terms of a collective bargaining
7 agreement, the collective bargaining agreement, any memorandum
8 of agreement or understanding signed pursuant to the collective
9 bargaining agreement, or any recognized and established practice
10 relative to the members of the bargaining unit shall prevail
11 except where the agreement, memorandum, or practice does not
12 conflict with this chapter.

13 (d) An action under subsection (a) shall not preclude an
14 action under subsection (b), and an action under subsection (b)
15 shall not preclude an action under subsection (a).

16 (e) This chapter shall not affect a right or remedy
17 available under law other than this chapter.

18 § -6 Uniformity of application and construction. In
19 applying and construing this chapter, consideration shall be
20 given to the need to promote uniformity of the law with respect
21 to its subject matter among states that enact it.



1 § -7 Relation to Electronic Signatures in Global and
2 National Commerce Act. This chapter modifies, limits, and
3 supersedes the Electronic Signatures in Global and National
4 Commerce Act (15 U.S.C. 7001 et seq.), but does not modify,
5 limit, or supersede section 101(c) of that act (15 U.S.C.
6 7001(c)), or authorize electronic delivery of any of the notices
7 described in Section 103(b) of that act (15 U.S.C. 7003(b)).

8 § -8 Relation to other state laws. Unless otherwise
9 provided in this chapter, if any provision in this chapter
10 conflicts with a provision in any other chapter, the provision
11 in this chapter shall control.

12 § -9 Severability. If any provision of this chapter or
13 its application to any person or circumstance is held invalid,
14 the invalidity does not affect other provisions or applications
15 of this chapter which can be given effect without the invalid
16 provision or application, and to this end the provisions of this
17 chapter are severable."

18 SECTION 2. This Act does not affect rights and duties that
19 matured, penalties that were incurred, and proceedings that were
20 begun before its effective date.

21 SECTION 3. This Act shall take effect on January 7, 2059.



Report Title:

Online Privacy; Employees; Applicants; Students; Prospective Students

Description:

Adopts uniform laws on protecting the online accounts of employees, applicants, students, and prospective students from employers and educational institutions, respectively. Takes effect 1/7/2059. (SD2)

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