

HB3890



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB3890

Introduced 2/22/2021, by Rep. Rita Mayfield

SYNOPSIS AS INTRODUCED:

820 ILCS 55/10

from Ch. 48, par. 2860

Amends the Right to Privacy in the Workplace Act. Makes a technical change in a Section concerning prohibited inquiries.

LRB102 17076 JLS 22505 b

A BILL FOR

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Right to Privacy in the Workplace Act is
5 amended by changing Section 10 as follows:

6 (820 ILCS 55/10) (from Ch. 48, par. 2860)

7 Sec. 10. Prohibited inquiries; online activities.

8 (a) It shall be unlawful for any employer to inquire, in a
9 written application or in any other manner, of any prospective
10 employee or of the ~~the~~ prospective employee's previous
11 employers, whether that prospective employee has ever filed a
12 claim for benefits under the Workers' Compensation Act or
13 Workers' Occupational Diseases Act or received benefits under
14 these Acts.

15 (b) (1) Except as provided in this subsection, it shall be
16 unlawful for any employer or prospective employer to:

17 (A) request, require, or coerce any employee or
18 prospective employee to provide a user name and password
19 or any password or other related account information in
20 order to gain access to the employee's or prospective
21 employee's personal online account or to demand access in
22 any manner to an employee's or prospective employee's
23 personal online account;

1 (B) request, require, or coerce an employee or
2 applicant to authenticate or access a personal online
3 account in the presence of the employer;

4 (C) require or coerce an employee or applicant to
5 invite the employer to join a group affiliated with any
6 personal online account of the employee or applicant;

7 (D) require or coerce an employee or applicant to join
8 an online account established by the employer or add the
9 employer or an employment agency to the employee's or
10 applicant's list of contacts that enable the contacts to
11 access the employee or applicant's personal online
12 account;

13 (E) discharge, discipline, discriminate against,
14 retaliate against, or otherwise penalize an employee for
15 (i) refusing or declining to provide the employer with a
16 user name and password, password, or any other
17 authentication means for accessing his or her personal
18 online account, (ii) refusing or declining to authenticate
19 or access a personal online account in the presence of the
20 employer, (iii) refusing to invite the employer to join a
21 group affiliated with any personal online account of the
22 employee, (iv) refusing to join an online account
23 established by the employer, or (v) filing or causing to
24 be filed any complaint, whether orally or in writing, with
25 a public or private body or court concerning the
26 employer's violation of this subsection; or

1 (F) fail or refuse to hire an applicant as a result of
2 his or her refusal to (i) provide the employer with a user
3 name and password, password, or any other authentication
4 means for accessing a personal online account, (ii)
5 authenticate or access a personal online account in the
6 presence of the employer, or (iii) invite the employer to
7 join a group affiliated with a personal online account of
8 the applicant.

9 (2) Nothing in this subsection shall limit an employer's
10 right to:

11 (A) promulgate and maintain lawful workplace policies
12 governing the use of the employer's electronic equipment,
13 including policies regarding Internet use, social
14 networking site use, and electronic mail use; or

15 (B) monitor usage of the employer's electronic
16 equipment and the employer's electronic mail without
17 requesting or using any employee or prospective employee
18 to provide any password or other related account
19 information in order to gain access to the employee's or
20 prospective employee's personal online account.

21 (3) Nothing in this subsection shall prohibit an employer
22 from:

23 (A) obtaining about a prospective employee or an
24 employee information that is in the public domain or that
25 is otherwise obtained in compliance with this amendatory
26 Act of the 97th General Assembly;

1 (B) complying with State and federal laws, rules, and
2 regulations and the rules of self-regulatory organizations
3 created pursuant to federal or State law when applicable;

4 (C) requesting or requiring an employee or applicant
5 to share specific content that has been reported to the
6 employer, without requesting or requiring an employee or
7 applicant to provide a user name and password, password,
8 or other means of authentication that provides access to
9 an employee's or applicant's personal online account, for
10 the purpose of:

11 (i) ensuring compliance with applicable laws or
12 regulatory requirements;

13 (ii) investigating an allegation, based on receipt
14 of specific information, of the unauthorized transfer
15 of an employer's proprietary or confidential
16 information or financial data to an employee or
17 applicant's personal account;

18 (iii) investigating an allegation, based on
19 receipt of specific information, of a violation of
20 applicable laws, regulatory requirements, or
21 prohibitions against work-related employee misconduct;

22 (iv) prohibiting an employee from using a personal
23 online account for business purposes; or

24 (v) prohibiting an employee or applicant from
25 accessing or operating a personal online account
26 during business hours, while on business property,

1 while using an electronic communication device
2 supplied by, or paid for by, the employer, or while
3 using the employer's network or resources, to the
4 extent permissible under applicable laws.

5 (4) If an employer inadvertently receives the username,
6 password, or any other information that would enable the
7 employer to gain access to the employee's or potential
8 employee's personal online account through the use of an
9 otherwise lawful technology that monitors the employer's
10 network or employer-provided devices for network security or
11 data confidentiality purposes, then the employer is not liable
12 for having that information, unless the employer:

13 (A) uses that information, or enables a third party to
14 use that information, to access the employee or potential
15 employee's personal online account; or

16 (B) after the employer becomes aware that such
17 information was received, does not delete the information
18 as soon as is reasonably practicable, unless that
19 information is being retained by the employer in
20 connection with an ongoing investigation of an actual or
21 suspected breach of computer, network, or data security.
22 Where an employer knows or, through reasonable efforts,
23 should be aware that its network monitoring technology is
24 likely to inadvertently to receive such information, the
25 employer shall make reasonable efforts to secure that
26 information.

1 (5) Nothing in this subsection shall prohibit or restrict
2 an employer from complying with a duty to screen employees or
3 applicants prior to hiring or to monitor or retain employee
4 communications as required under Illinois insurance laws or
5 federal law or by a self-regulatory organization as defined in
6 Section 3(A)(26) of the Securities Exchange Act of 1934, 15
7 U.S.C. 78(A)(26) provided that the password, account
8 information, or access sought by the employer only relates to
9 an online account that:

10 (A) an employer supplies or pays; or

11 (B) an employee creates or maintains on behalf of or
12 under direction of an employer in connection with that
13 employee's employment.

14 (6) For the purposes of this subsection:

15 (A) "Social networking website" means an
16 Internet-based service that allows individuals to:

17 (i) construct a public or semi-public profile
18 within a bounded system, created by the service;

19 (ii) create a list of other users with whom they
20 share a connection within the system; and

21 (iii) view and navigate their list of connections
22 and those made by others within the system.

23 "Social networking website" does not include
24 electronic mail.

25 (B) "Personal online account" means an online account,
26 that is used by a person primarily for personal purposes.

1 "Personal online account" does not include an account
2 created, maintained, used, or accessed by a person for a
3 business purpose of the person's employer or prospective
4 employer.

5 (Source: P.A. 98-501, eff. 1-1-14; 99-610, eff. 1-1-17.)