

A.C.A. § 11-2-124

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Revision Commission)

[AR - Arkansas Code Annotated](#) [Title 11 Labor and Industrial Relations](#) [Chapter 2 Department of Labor](#) [Subchapter 1 – General Provisions](#)

11-2-124. Social media accounts of current and prospective employees — Definitions.

(a) As used in this section:

(1) "Employee" means an individual who provides services or labor for wages or other remuneration for an employer;
(2) "Employer" means a person or entity engaged in business, an industry, a profession, a trade, or other enterprise in the state or a unit of state or local government, including without limitation an agent, representative, or designee of the employer; and

(3)

(A) "Social media account" means a personal account with an electronic medium or service where users may create, share, or view user-generated content, including without limitation:

(i) Videos;

(ii) Photographs;

(iii) Blogs;

(iv) Podcasts;

(v) Messages;

(vi) Emails; and

(vii) Website profiles or locations.

(B) "Social media account" does not include an account:

(i) Opened by an employee at the request of an employer;

(ii) Provided to an employee by an employer such as a company email account or other software program owned or operated exclusively by an employer;

(iii) Set up by an employee on behalf of an employer; or

(iv) Set up by an employee to impersonate an employer through the use of the employer's name, logos, or trademarks.

(C) "Social media account" includes without limitation an account established with Facebook, Twitter, LinkedIn, Myspace, or Instagram.

(b)

(1) An employer shall not require, request, suggest, or cause a current or prospective employee to:

(A) Disclose his or her username and password to the current or prospective employee's social media account; or

(B) Change the privacy settings associated with his or her social media account.

(2) An employer shall not require a current or prospective employee to add another employee, supervisor, or administrator to the list or contacts associated with his or her social media account.

(3) If an employer inadvertently receives an employee's username, password, or other login information to the employee's social media account through the use of an electronic device provided to the employee by the employer or

a program that monitors an employer's network, the employer is not liable for having the information but may not use the information to gain access to an employee's social media account.

(c) An employer shall not:

(1) Take action against or threaten to discharge, discipline, or otherwise penalize a current employee for exercising his or her rights under subsection (b) of this section; or

(2) Fail or refuse to hire a prospective employee for exercising his or her rights under subsection (b) of this section.

(d) This section does not prohibit an employer from viewing information about a current or prospective employee that is publicly available on the internet.

(e) Nothing in this section:

(1) Prevents an employer from complying with the requirements of federal, state, or local laws, rules, or regulations or the rules or regulations of self-regulatory organizations; or

(2)

(A) Affects an employer's existing rights or obligations to request an employee to disclose his or her username and password for the purpose of accessing a social media account if the employee's social media account activity is reasonably believed to be relevant to a formal investigation or related proceeding by the employer of allegations of an employee's violation of federal, state, or local laws or regulations or of the employer's written policies.

(B) If an employer exercises its rights under subdivision (e)(2)(A) of this section, the employee's username and password shall only be used for the purpose of the formal investigation or a related proceeding.

History

History.

Acts 2013, No. 1480, § 1; 2017, No. 792, § 1.

West's Arkansas Administrative Code

Title 010. Department of Labor

Division 14. Labor Standards Division

Rule 1. Administrative Regulations of the Labor Standards Division of the Arkansas Department of Labor

Ark. Admin. Code 010.14.1-500

010.14.1-500. Prohibiting Employer From Requiring Access to Employee Social Media Account

Currentness

A. Purpose.

The purpose of this rule is to provide clarification for the enforcement and administration of [Ark. Code Ann. § 11-2-124](#). In general, the statute provides that an employer shall not require, request, suggest, or cause a current or prospective employee to:

1. Disclose his or her username and password to the current or prospective employee's social media account;
2. Add an employee, supervisor, or administrator to the list or contacts associated with his or her social media account; or
3. Change the privacy settings associated with his or her social medial account.

The Director of the Department of Labor is authorized to enforce all labor laws in the State of Arkansas, the enforcement of which is not otherwise specifically provided for. [Ark. Code Ann. § 11-2-108\(1\)](#). Further, the director has the power to make, modify, or repeal such rules, or changes in rules, as he may deem necessary to carry out the provisions of subchapter 1, Chapter 1 of the Arkansas Code, which includes §§ [11-2-108](#) and [-124](#). [Ark. Code Ann. § 11-2-110\(b\)](#).

B. Definitions

As used in this rule and [Ark. Code Ann. § 11-2-124\(b\)](#):

1. "Agent, representative or designee of the employer" means an individual with supervisory, managerial, or operational control over the work of an employee; including a human resources officer, manager, or supervisor with respect to a prospective employee;
2. "Cause" means an action by the employer which results in the employee or potential employee acting in a manner they otherwise would not through stated or implied coercion;
3. "Prospective employee" means an individual who has submitted a job application or equivalent document, such as a resume, for an open position or an individual who is actively and specifically recruited by an employer;

4. “Request” means a request in which the employer intends to induce the employee or potential employee to act in a manner they otherwise would not through stated or implied coercion;

5. “Statute” means [Ark. Code Ann. § 11-2-124](#);

6. “Suggest” means a suggestion in which the employer intends to induce the employee or potential employee to act in a manner they otherwise would not through stated or implied coercion; and

7. “Stated or implied coercion” includes, but is not limited to a stated or implied threat to discharge, discipline or otherwise penalize a current employee, or a stated or implied threat to refuse to hire a prospective employee.

C. Acts Not Prohibited

The following acts are not prohibited by this rule or [Ark. Code Ann. § 11-2-124](#).

1. The act of issuing an invitation to add a current or prospective employee through a social media account, in itself, is not prohibited.

2. Nothing in the statute or this rule is intended to prohibit employees, supervisors, and administrators from adding one another as social media contacts where the interaction is voluntary and no stated or implied coercion is present.

3. Nothing in the statute or this rule prohibits an employer from utilizing social media as a means of advertising to the general public or recruiting prospective employees, provided there is no stated or implied threat to refuse to hire a prospective employee who exercises any right pursuant to the statute.

4. Nothing in the statute or this rule prohibits an employer from requiring an employee to monitor communications from the employer by means of email or a company website.

5. Any requirement, request, suggestion or action of an employer which occurred prior to the effective date of Act 1480 of 2013 shall not be a violation of the act even though the social media relationship continues after the effective date of the act. In the event an employee or prospective employee terminates the social media relationship or contact, any action or requirement of the employer after the effective date of Act 1480 of 2013 to renew or reinstate such contact shall be subject to the requirements of the act.

D. Enforcement

1. The Department of Labor shall not refer any violations of [Ark. Code Ann. § 11-2-124](#) for criminal prosecution.

2. In the event the Labor Standards Division determines that there has been a violations of § 11-2-124, or this rule, following an investigation of the matter, the department may assess a civil money penalty pursuant to [Ark. Code Ann. 11-2-105\(b\)](#) or seek injunctive relief.

3. Notice of a civil money penalty assessment and the procedures for contesting an assessment shall be those in ADL Rule 010.14-111.

E. Effective Date

The effective date of this rule is July 14, 2014.

Credits

Adopted July 14, 2014.

Current with amendments received through December 15, 2019.

Ark. Admin. Code 010.14.1-500, AR ADC 010.14.1-500

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