

AMENDMENTS TO LB83

(Amendments to Final Reading copy)

Introduced by Larson, 40.

1 1. Insert the following new sections:

2 Section 1. Sections 1 to 11 of this act shall be known and may be
3 cited as the Workplace Privacy Act.

4 Sec. 2. For purposes of the Workplace Privacy Act:

5 (1) Adverse action means the discharge of an employee, a threat
6 against an employee, or any other form of discrimination against an
7 employee that negatively affects the employee's employment, including
8 actions that affect the employee's compensation, work location, rights,
9 immunities, promotions, privileges, or other terms and conditions of
10 employment;

11 (2) Applicant means a prospective employee applying for employment;

12 (3) Electronic communication device means a cellular telephone,
13 personal digital assistant, electronic device with mobile data access,
14 laptop computer, pager, broadband personal communication device, two-way
15 messaging device, electronic game, or portable computing device;

16 (4) Employee means an individual employed by an employer;

17 (5) Employer means a public or nonpublic entity or an individual
18 engaged in a business, an industry, a profession, a trade, or other
19 enterprise in the state, including any agent, representative, or designee
20 acting directly or indirectly in the interest of such an employer; and

21 (6)(a) Personal Internet account means an individual's online
22 account that requires login information in order to access or control the
23 account.

24 (b) Personal Internet account does not include:

25 (i) An online account that an employer or educational institution
26 supplies or pays for, except when the employer or educational institution

1 pays only for additional features or enhancements to the online account;
2 or
3 (ii) An online account that is used exclusively for a business
4 purpose of the employer.

5 Sec. 3. No employer shall:

6 (1) Require or request that an employee or applicant provide or
7 disclose any user name or password or any other related account
8 information in order to gain access to the employee's or applicant's
9 personal Internet account by way of an electronic communication device;

10 (2) Require or request that an employee or applicant log into a
11 personal Internet account by way of an electronic communication device in
12 the presence of the employer in a manner that enables the employer to
13 observe the contents of the employee's or applicant's personal Internet
14 account or provides the employer access to the employee's or applicant's
15 personal Internet account;

16 (3) Require an employee or applicant to add anyone, including the
17 employer, to the list of contacts associated with the employee's or
18 applicant's personal Internet account or require or otherwise coerce an
19 employee or applicant to change the settings on the employee's or
20 applicant's personal Internet account which affects the ability of others
21 to view the content of such account; or

22 (4) Take adverse action against, fail to hire, or otherwise penalize
23 an employee or applicant for failure to provide or disclose any of the
24 information or to take any of the actions specified in subdivisions (1)
25 through (3) of this section.

26 Sec. 4. An employer shall not require an employee or applicant to
27 wave or limit any protection granted under the Workplace Privacy Act as
28 a condition of continued employment or of applying for or receiving an
29 offer of employment. Any agreement to waive any right or protection under
30 the act is against the public policy of this state and is void and
31 unenforceable.

1 Sec. 5. An employer shall not retaliate or discriminate against an
2 employee or applicant because the employee or applicant:

3 (1) Files a complaint under the Workplace Privacy Act; or

4 (2) Testifies, assists, or participates in an investigation,
5 proceeding, or action concerning a violation of the act.

6 Sec. 6. An employee shall not download or transfer an employer's
7 private proprietary information or private financial data to a personal
8 Internet account without authorization from the employer. This section
9 shall not apply if the proprietary information or the financial data is
10 otherwise disclosed by the employer to the public pursuant to other
11 provisions of law or practice.

12 Sec. 7. Nothing in the Workplace Privacy Act limits an employer's
13 right to:

14 (1) Promulgate and maintain lawful workplace policies governing the
15 use of the employer's electronic equipment, including policies regarding
16 Internet use and personal Internet account use;

17 (2) Request or require an employee or applicant to disclose access
18 information to the employer to gain access to or operate:

19 (a) An electronic communication device supplied by or paid for in
20 whole or in part by the employer; or

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

24 (3) Restrict or prohibit an employee's access to certain web sites
25 while using an electronic communication device supplied by or paid for in
26 whole or in part by the employer or while using an employer's network or
27 resources, to the extent permissible under applicable laws;

28 (4) Monitor, review, access, or block electronic data stored on an
29 electronic communication device supplied by or paid for in whole or in
30 part by the employer or stored on an employer's network, to the extent
31 permissible under applicable laws;

1 (5) Access information about an employee or applicant that is in the
2 public domain or is otherwise obtained in compliance with the Workplace
3 Privacy Act;

4 (6) Conduct an investigation or require an employee to cooperate in
5 an investigation under any of the following circumstances:

6 (a) If the employer has specific information about potentially
7 wrongful activity taking place on the employee's personal Internet
8 account, for the purpose of ensuring compliance with applicable laws,
9 regulatory requirements, or prohibitions against work-related employee
10 misconduct; or

11 (b) If the employer has specific information about an unauthorized
12 download or transfer of the employer's private proprietary information,
13 private financial data, or other confidential information to an
14 employee's personal Internet account;

15 (7) Take adverse action against an employee for downloading or
16 transferring an employer's private proprietary information or private
17 financial data to a personal Internet account without the employer's
18 authorization;

19 (8) Comply with requirements to screen employees or applicants
20 before hiring or to monitor or retain employee communications that are
21 established by state or federal law or by a self-regulatory organization
22 as defined in 15 U.S.C. 78c(a)(26), as such section existed on January 1,
23 2016; or

24 (9) Comply with a law enforcement investigation conducted by a law
25 enforcement agency.

26 Sec. 8. Nothing in the Workplace Privacy Act limits a law
27 enforcement agency's right to screen employees or applicants in
28 connection with a law enforcement employment application or a law
29 enforcement officer conduct investigation.

30 Sec. 9. (1) The Workplace Privacy Act does not create a duty for an
31 employer to search or monitor the activity of a personal Internet

1 account.

2 (2) An employer is not liable under the act for failure to request
3 or require that an employee or applicant grant access to, allow
4 observation of, or disclose information that allows access to or
5 observation of the employee's or applicant's personal Internet account.

6 Sec. 10. If an employer inadvertently learns the user name,
7 password, or other means of access to an employee's or applicant's
8 personal Internet account through the use of otherwise lawful technology
9 that monitors the employer's computer network or employer-provided
10 electronic communication devices for service quality or security
11 purposes, the employer is not liable for obtaining the information, but
12 the employer shall not use the information to access the employee's or
13 applicant's personal Internet account or share the information with
14 anyone. The employer shall delete such information as soon as
15 practicable.

16 Sec. 11. Upon violation of the Workplace Privacy Act, an aggrieved
17 employee or applicant may, in addition to any other available remedy,
18 institute a civil action within one year after the date of the alleged
19 violation or the discovery of the alleged violation, whichever is later.
20 The employee or applicant shall file an action directly in the district
21 court of the county where such alleged violation occurred. The district
22 court shall docket and try such case as any other civil action, and any
23 successful complainant shall be entitled to appropriate relief, including
24 temporary or permanent injunctive relief, general and special damages,
25 reasonable attorney's fees, and costs.

26 Sec. 13. If any section in this act or any part of any section is
27 declared invalid or unconstitutional, the declaration shall not affect
28 the validity or constitutionality of the remaining portions.

29 2. On page 1, strike beginning with "wages" in line 1 through line 3
30 and insert "employment; to amend section 48-1220, Reissue Revised
31 Statutes of Nebraska; to adopt the Workplace Privacy Act; to redefine a

- 1 term relating to wages and sex discrimination; to provide severability;
- 2 and to repeal the original section.".
- 3 3. Renumber the remaining sections accordingly.