

## **Is Your Employer or Prospective Employer Entitled to Access Your Facebook, Twitter, and Other Social Media Accounts?**

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[New Developments in Employment Law: California Labor Code § 980 (AB 1844). “Social media” defined; prohibited employer actions; exceptions]

California Labor Code § 980 became effective January 1, 2013. The new law provides specific protection for employees and applicants regarding their private social media accounts. However, there are limitations and employees should be careful about their social media activities and presence.

### Protections

The statute defines “Social media” broadly, as an “electronic service or account, or electronic content, including, but not limited to, videos, still photographs, blogs, video blogs, podcasts, instant and text messages, email, online services or accounts, or Internet Web site profiles or locations.”

Specifically, the new statute prevents an employer from requiring or requesting an employee or job applicant to (1) disclose a username or password for the purpose of accessing personal social media, (2) access personal social media in the presence of the employer, or (3) divulge any personal social media.

The employee is also protected from discharge, discipline, threats of discipline, or other retaliation by the employer for not complying with a request or demand that violates these protections.

### Limitations

The new statute does not prevent employers from exercising their existing rights and obligations regarding an investigation of an employee’s misconduct or an employee’s violation of laws or regulations, as long as the Social media content is used only for purposes of investigation or the related proceeding.

Additionally, the statute allows for an employer to require or request disclosure of passwords or usernames for employer-issued electronic devices.

### Conclusion

Section 980 provides some clarity in the relatively new, and constantly changing, world of social media and technology. Employers are using social media to screen potential employees and to supervise existing ones. Under this new law, an employer cannot request or force an employee to give access, to access in front of, or to divulge Social media information to the employer absent some investigation related to a specific violation of laws or policies. However, an employer can likely access public social media information of its employees and applicants, but the employer probably cannot use this information if it relates to some protected status under existing law.

The law does not specify what is defined as an employer-issued electronic device. Many employers offer to split costs on smart phones and their service plans so that the employee can use the phone for work and personal use and not have to carry two phones. Thus, there will likely be litigation or future legislation on this issue.

To date, there is still little analysis or published case law discussing the reach or limitations of California Labor Code § 980. However, this is likely to change as social media continues to grow in size and importance in our society.

LexisNexis Article on AB 1844:

<http://www.lexisnexis.com/community/emergingissues/blogs/cyberriskandprivacy/archive/2012/12/12/california-ab-1844-limiting-employers-access-to-employees-social-media.aspx>

Text of Bill/Statute at [leginfo.legislature.ca.gov](http://leginfo.legislature.ca.gov):

<http://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml>

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This article is a summary discussion only - to simply give you a heads up on a topic. The information contained herein is not legal advice. Every scenario is different and if you need legal advice, you should contact an attorney immediately.