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Int. No. 224

By Council Members Palma, Williams, Koslowitz, Johnson and Rodriguez

A Local Law to amend the administrative code of the city of New York, in relation to personal online accounts and employment.

Be it enacted by the Council as follows:

Section 1. Subdivision (e) of section 2203 of the New York city charter, as added by local law number 46 for the year 2013, is hereby amended to read as follows:

(e) The commissioner shall have all powers as set forth in [chapter] chapters 8 and 9 of title 20 of the administrative code relating to the receipt, investigation, and resolution of complaints thereunder regarding earned sick time and confidentiality of personal online accounts.

§ 2. Paragraph 1 of subdivision (h) of section 2203 of the New York city charter, as relettered by local law number 46 for the year 2013, is hereby amended to read as follows:

(h)(1) Notwithstanding any inconsistent provision of law, the department shall be authorized, upon due notice and hearing, to impose civil penalties for the violation of any laws or rules the enforcement of which is

within the jurisdiction of the department pursuant to this charter, the administrative code or any other general, special or local law. The department shall have the power to render decisions and orders and to impose civil penalties for all such violations, and to order equitable relief for and payment of monetary damages in connection with enforcement of [chapter] chapters 8 and 9 of title 20 of the administrative code. Except to the extent that dollar limits are otherwise specifically provided, such civil penalties shall not exceed five hundred dollars for each violation. All proceedings authorized pursuant to this subdivision shall be conducted in accordance with rules promulgated by the commissioner. The remedies and penalties provided for in this subdivision shall be in addition to any other remedies or penalties provided for the enforcement of such provisions under any other law including, but not limited to, civil or criminal actions or proceedings.

§ 3. Title 20 of the administrative code of the city of New York is amended by adding a new chapter 9 to read as follows:

#### CHAPTER 9

### **RIGHT OF EMPLOYEES AND PROSPECTIVE EMPLOYEES TO CONFIDENTIALITY OF PERSONAL ONLINE ACCOUNTS**

§ 20-930 **Definitions.** For purposes of this chapter, the following terms shall be defined as follows:

a. “Electronic communications device” shall mean any device that uses electronic signals to create, transmit, and receive information, including a computer, telephone, personal digital assistant or similar device.

b. “Employee” shall mean any person who provides services to an employer in return for the payment of direct or indirect monetary wages or profit from such employer, or provides services to an employer for no monetary compensation for the purpose of obtaining employment experience and training from such employer.

c. “Employment agency” shall mean any person undertaking to procure employees or opportunities to work.

d. “Employer” shall mean any person, partnership, association, corporation or non-profit entity which employs one or more persons, including agencies of the city of New York, as defined in section 1-112 of the code, and the council of the city of New York, or an employer’s agent, representative or designee. Employer

shall also include an employment agency and a labor organization as defined in this section.

e. “Labor organization” shall mean any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms and conditions of employment, or of other mutual aid or protection in connection with employment.

f. “Personal online account” shall mean any online account, service or profile on a website, including, but not limited to, any social media, email provider or electronic-commerce website, that is protected by a password or other means of authentication, and is intended to be used primarily or exclusively by an employee or prospective employee for personal communications or other personal use.

g. “Social and networking media account” shall mean any personal online account that allows individuals to: construct a public or semi-public profile within a bounded system created by such service; create a list of other users with whom such individuals share a connection within the system; and view and navigate such individuals’ list of connections and those made by others within the system the content of which may include, but is not limited to, videos, still photographs, instant messages, text messages and email.

§ 20-931 **Prohibition against employers requiring access to personal online accounts.** a. No employer shall request, require or otherwise coerce an employee, or a prospective employee in connection with the interview or hiring process, to:

(1) provide a password or other means of authentication in order to gain access to such employee or prospective employee’s personal online accounts;

(2) access such employee or prospective employee’s personal online accounts in the presence of the employer or prospective employer; or

(3) alter the privacy settings on such employee or prospective employee’s personal online accounts that would allow the employer or prospective employer to view the content of such accounts.

b. No employer shall require or otherwise coerce an employee or prospective employee to add any person, including the employer or prospective employer, to the list of contacts associated with such employee

or prospective employee's personal online accounts, provided that a request to add such a person to the list of contacts associated with such accounts shall not itself be unlawful.

c. No employer shall discharge, discipline, threaten to discharge or discipline, or otherwise retaliate against an employee for failing to comply with a request or demand by such employer that violates this section or for filing a complaint pursuant to this chapter. However, this section does not prohibit an employer from terminating or otherwise taking an adverse action against an employee if otherwise permitted by law.

d. Paragraph two of subdivision a of this section shall not apply to accessing social and networking media accounts in connection with the investigation of a prospective employee for employment:

1. as a police officer, as that term is defined in subdivision thirty-four of section 1.20 of the criminal procedure law, or a peace officer, as that term is defined in section 2.10 of the criminal procedure law;

2. as an officer or uniformed member of the fire department of the city of New York; or

3. as an officer or uniformed member of the correction department of the city of New York.

§ 20-932 **Application of chapter.** a. Nothing in this chapter shall prohibit an employer from obtaining information about an employee or prospective employee that is publicly available.

b. Nothing in this chapter shall affect an employer's rights and obligations to require that an employee share specific content of such employee's personal online account, provided that access can be provided to such account to such employer without requiring such employee to provide a user name and password, or other means of authentication that provides access to such account, as part of an investigation:

1. for the purpose of ensuring compliance with applicable laws and regulatory requirements;

2. for the purpose of enforcing prohibitions against work-related employee misconduct based on the receipt of specific information by an employer or other source about activity of an employee on a personal online account; or

3. of an employee's actions based on the receipt of specific information about the unauthorized transfer by an employee of an employer's proprietary or confidential information, or financial data by an employee via

such account.

c. Nothing in this chapter shall preclude an employer from requiring, or requesting an employee to disclose, a username, password, or other authentication means for accessing:

1. an online account created, provided or used by virtue of the employee's employment relationship with the employer; or

2. an electronic communications device supplied by or paid for by the employer.

d. Nothing in this chapter shall preclude an employer from lawful monitoring of employees' use of employer owned computers, networks or servers, including any use of personal online accounts on such computers, networks or servers.

e. If through lawful monitoring of an employee's use of employer owned computers, networks, servers, or electronic communications devices, an employer inadvertently received an employee's password or other authentication information, such employer is not liable for possessing such password or authentication information, but may not use such password or authentication information to access an employee's personal online account.

f. Nothing in this chapter shall preclude an employer from complying with requirements of state and federal statutes, rules or regulations, case law or self-regulatory organizations as defined in section 3(a)(26) of the securities and exchange act of 1934, 15 U.S.C. § 78(c)(a)(26), which require the recording and storage of certain business related communications. For purposes of this exception, an employer may require access to personal online accounts under such laws, rules and regulations only if such employer has a reasonable belief that such accounts have been used for business purposes.

g. Nothing in this chapter shall preclude an employer from reviewing information or receiving access to employees' personal online accounts pursuant to lawful subpoena or court order.

§ 20-933 Enforcement. a. The department shall enforce the provisions of this chapter. The department shall utilize multiple means of communication to receive complaints regarding non-compliance with this

chapter and shall investigate complaints received by the department in a timely manner.

b. Any person alleging a violation of this chapter shall have the right to file a complaint with the department within one hundred eighty days of the date such person knew or should have known of the alleged violation. The department shall maintain as confidential the identity of any complainant unless disclosure of such complainant's identity is necessary for resolution of the investigation or otherwise required by law. The department shall, to the extent practicable, notify such complainant that the department will be disclosing his or her identity prior to such disclosure.

c. Any person claiming to be aggrieved by an act that violates section 20-931 of this chapter may make, sign and file with the department a verified complaint in writing and proceed with such complaint, or commence a civil action and proceed with such action. Upon receiving a complaint alleging a violation of this chapter, the department shall investigate such complaint. The department shall keep complainants reasonably notified regarding the status of their complaint and any resultant investigation. If the department believes that a violation has occurred, it shall issue a notice of violation to the employer that is the subject of the complaint. The commissioner shall prescribe the form and wording of such notices of violation. The notice of violation shall be returnable to the administrative tribunal authorized to adjudicate violations of this chapter.

d. The department may also itself make, sign and file a verified complaint alleging that an employer has violated section 20-931 of this chapter and proceed with such complaint pursuant to the provisions of subdivision c of this section.

e. In addition to the aforementioned provisions of this section, any person claiming to be aggrieved by a violation of this chapter shall have a cause of action in any court of competent jurisdiction for compensatory damages, injunctive and declaratory relief, attorney's fees and costs, and such other relief as such court deems appropriate. Submitting a complaint to the department shall be neither a prerequisite nor a bar to bringing a private action.

f. A person must file a complaint with the department or a court of competent jurisdiction within one

hundred eighty days of when that person knew or should have known of an alleged violation of this chapter.

§ 20-934 Violations. a. Notwithstanding any inconsistent provision of law, if, in an action instituted pursuant to this chapter judgment is rendered in favor of complainant, the department shall have the power to impose penalties provided for in this chapter and to grant an employee, prospective employee or former employee all appropriate relief. Such relief shall include a civil penalty of not less than two hundred and fifty dollars but not more than two thousand dollars for each violation, and equitable relief, as appropriate, including, but not limited to, ordering an injunction prohibiting any acts tending to render ineffectual relief that could be ordered by the department after a hearing as provided by this chapter.

b. No employer shall be liable for more than one violation of section 20-931 pertaining to the same complainant during a single day.

§ 4. This local law shall take effect one hundred and twenty days after its enactment into law.

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