

## **Title 11. Labor and Industrial Relations**

### **Chapter III. Generally, Department of Labor and Licensing**

#### **Subchapter A. Generally**

#### **Part 14. Prohibiting Employer from Requiring Access to Employee Social Media Account**

**Codification Notes.** This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "Effective Date[.] The effective date of this rule is July 14, 2014."

#### **Subpart 1. Generally**

##### **11 CAR § 14-101. Purpose.**

(a) The purpose of this part is to provide clarification for the enforcement and administration of Arkansas Code § 11-2-124.

(b) 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 of contacts associated with his or her social media account; or

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

(c)(1) The Director of the Division of Labor is authorized to enforce all labor laws in the State of Arkansas, the enforcement of which is not otherwise specifically provided for.

(2) See Arkansas Code § 11-2-108(1).

(d)(1) Further, the director has the power to make, modify, or repeal such rules, or changes in rules, as he or she may deem necessary to carry out the provisions of

Arkansas Code § 11-2-101 et seq., which includes Arkansas Code §§ 11-2-108 and 11-2-124.

(2) See Arkansas Code § 11-2-110(b).

**Authority.** Arkansas Code § 11-2-110.

**11 CAR § 14-102. Definitions.**

As used in this part and Arkansas Code § 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) "Stated or implied coercion" includes, but is not limited to a stated or implied threat to:

(A) Discharge, discipline, or otherwise penalize a current employee; or

(B) Refuse to hire a prospective employee;

(6) "Statute" means Arkansas Code § 11-2-124; and

(7) "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.

**Authority.** Arkansas Code § 11-2-110.

**11 CAR § 14-103. Acts not prohibited.**

The following acts are not prohibited by this part or Arkansas Code § 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 part 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 part 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 part prohibits an employer from requiring an employee to monitor communications from the employer by means of email or a company website; and

(5)(A) Any requirement, request, suggestion, or action of an employer which occurred prior to the effective date of Acts 2013, No. 1480, shall not be a violation of the act even though the social media relationship continues after the effective date of the act.

(B) 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 Acts 2013, No. 1480, to renew or reinstate such contact shall be subject to the requirements of Acts 2013, No. 1480.

**Authority.** Arkansas Code § 11-2-110.

**11 CAR § 14-104. Enforcement.**

(a) The Division of Labor shall not refer any violations of Arkansas Code § 11-2-124 for criminal prosecution.

(b) In the event the Labor Standards Division determines that there has been a violation of Arkansas Code § 11-2-124 or this part, following an investigation of the matter, the Division of Labor may assess a civil money penalty pursuant to Arkansas Code § 11-2-105(b), or seek injunctive relief.

(c) Notice of a civil money penalty assessment and the procedures for contesting an assessment shall be those in 11 CAR § 11-1101 et seq.

**Authority.** Arkansas Code §§ 11-2-105, 11-2-110.