

010.14 Administrative Regulations of the Labor Standards Division of the Arkansas Department of Labor

010.14-500 Prohibiting Employer From Requiring Access to Employee Social Media Account

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 subchapter1, 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.