



Personal Internet Account Privacy

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Wisconsin's Internet privacy protection law, set forth in s. 995.55, Stats., generally prohibits employers, educational institutions, and landlords from requesting or requiring that a person provide access to or observation of his or her account access information¹ for any personal Internet account, and from discriminating against a person who does not provide such access. For the purposes of the law, a "personal Internet account" is an Internet-based account that is created and used by an individual exclusively for purposes of personal communications.² A person who violates the law may be subject to a forfeiture and enforcement by the Department of Workforce Development (DWD). This issue brief provides an overview of the restrictions on the access to a person's personal Internet account by an employer, educational institution, or landlord; exceptions to those restrictions; and enforcement of those restrictions by DWD.

Employers

The state Internet privacy protection law specifies that, with certain exceptions, an employer³ may not request or require an employee or applicant to disclose access information, grant access, or allow observation, of a personal Internet account, as a condition of employment. An employer is also prohibited from discharging or otherwise discriminating against a person who refuses such a request or opposes such practices.⁴

Under the exceptions, an employer may do any of the following:⁵

- Discharge or discipline an employee for transferring proprietary or confidential information, or financial data, to the employee's personal Internet account without authorization.
- Conduct an investigation of certain misconduct, if the employer has reasonable cause to believe that activity in the personal Internet account relating to the misconduct has occurred. Misconduct includes: any alleged unauthorized transfer of proprietary or confidential information or financial data; any other alleged employment-related misconduct; any violation of the law; or any violation of the employer's work rules as specified in an employee handbook. In conducting an investigation, an employer may require an employee to grant access or allow observation of a personal Internet account, but may not require the employee to disclose access information for that account.
- Restrict or prohibit a person's access to certain Internet sites while using a device or network that is supplied or paid for in whole or in part by the employer.
- Request or require access to a device, account, or service that is supplied or paid for in whole or in part by the employer, which is provided by virtue of the employment relationship or is used for the employer's business purposes.
- View, access, or use information about an employee or applicant that is available in the public domain or that can be viewed without access information.
- Request or require disclosure of an employee's personal email address.

Additionally, the law does not prevent an employer in the securities industry from complying with regulations relating to applicant screening and business oversight.⁶

An employer that inadvertently obtains access information, through use of the employer's network or use of a device that is supplied or paid for in whole or in part by the employer, is not liable for possessing

that information so long as the information is not used to access the employee’s personal Internet account.⁷

Educational Institutions

The state Internet privacy protection law specifies that, with certain exceptions, an educational institution may not request or require a student or prospective student to disclose access information, grant access, or allow observation, of a personal Internet account, as a condition of admission or enrollment. An educational institution is also prohibited from refusing to admit, expel, suspend, or otherwise discipline a person who refuses such a request or opposes such practices. An “educational institution” includes a college, university, technical college, public school, charter school, private school, and a private educational testing service.⁸

Under the exceptions, an educational institution may request or require access to a device, account, or service that is supplied or paid for in whole or in part by the educational institution, which is provided by virtue of the student’s admission to the institution or is used for educational purposes. An educational institution may also view, access, or use information about a student or prospective student that is available in the public domain or that can be viewed without access information.⁹

Landlords

Under the state Internet privacy protection law, a landlord may not request or require a tenant or prospective tenant to disclose access information, grant access, or allow observation, of a personal Internet account, as a condition of tenancy. A landlord is also prohibited from discriminating against a tenant or prospective tenant who refuses such a request or opposes such practices. However, a landlord may view, access, or use information about a tenant or prospective tenant that is available in the public domain or that can be viewed without access information.¹⁰

Enforcement

A person who has been discharged, expelled, disciplined, or otherwise discriminated against in violation of the law may file a complaint with DWD.¹¹ An employer, educational institution, or landlord who violates a person’s privacy rights in a personal Internet account is subject to a forfeiture of up to \$1,000. Additionally, if DWD finds that a violation has occurred, it has the authority to order the employer, educational institution, or landlord to take certain actions to remedy the violation.¹²

The state Internet privacy protection law explicitly states that its provisions do not create a duty for an employer, educational institution, or landlord to search or monitor the activity of a personal Internet account. Likewise, an employer, educational institution, or landlord is not liable for any failure to request or to require access or observation of a personal Internet account.¹³

¹ “Access information” is defined as “a user name and password or any other security information that protects access to a personal Internet account.” [s. 995.55 (1) (a), Stats.]

² s. 995.55 (1) (d), Stats.

³ An “employer” is defined as “any person engaged in any activity, enterprise, or business employing at least one individual,” including any component of state or local government. [s. 995.55 (1) (b), Stats.]

⁴ s. 995.55 (2) (a), Stats.

⁵ s. 995.55 (2) (b), Stats.

⁶ s. 995.55 (2) (b) 5., Stats.

⁷ s. 995.55 (2) (d), Stats.

⁸ s. 995.55 (3) (a), Stats.

⁹ s. 995.55 (3) (b), Stats.

¹⁰ s. 995.55 (4) (a), Stats.

¹¹ More information on how to file a complaint can be found on [DWD’s website](http://www.dwd.wisconsin.gov).

¹² s. 995.55 (6), Stats.

¹³ s. 995.55 (5), Stats.