



UNIFORM EMPLOYEE AND STUDENT ONLINE PRIVACY PROTECTION ACT (2016)

—Summary—

Today, most individuals have online accounts of some type. These include social media accounts, bank accounts, and email accounts, among others. Generally, when someone asks for access to the login information for, or non-public content of, a personal online account, an individual is free to say “no.” But that is less true in the employment and educational contexts. Employers may have the power to coerce access to personal online accounts of individuals who are, or seek to become, their employees. Similarly, educational institutions may have coercive power over those who are, or seek to become, their students. When an employer or educational institution asks for the login information for, or non-public content of, an employee’s or student’s online account, that person may find it difficult to refuse. In recent years, there have been a number of reports of incidents where employers and educational institutions have demanded, and received, such access.

The Uniform Employee and Student Online Privacy Protection Act (UESOPPA) provides a uniform model for states to adopt. Its principal goal is to enable employees and students to make choices about whether, and when, to provide employers and educational institutions with access to their personal online accounts. To this end, the act prohibits employers and public and private post-secondary educational institutions from requiring, coercing, or requesting that employees or students provide them with access to the login information for, or non-public content of, these accounts. It further prohibits employers and educational institutions from requiring or coercing an employee or student to add them to the list of those given access to the account (to “friend” them, in common parlance), though it does not prohibit them from *requesting* to be added.

UESOPPA is divided into 10 sections. Section 1 is the short title. Section 2 defines important terms used in the act. Section 3 delineates protections for employee protected personal online accounts and creates exceptions to these protections. Section 4 delineates protections for student protected personal online accounts and creates exceptions to these protections.

Section 3 and Section 4 are both divided into four subsections: subsection (a), which prohibits an employer (or educational institution) from taking certain actions that would compromise the privacy of an employee’s (or student’s) protected personal online account; subsection (b), which creates exceptions to these prohibitions; subsection (c), which provides additional protections for employee (or student) content if an employer (or educational institution) accesses employee (or student) content for a purpose specified in subsection (b)(3); and subsection (d), which provides additional protections when an employer (or educational institution), by virtue of lawful system monitoring technology, gains access to login information for an employee’s (or student’s) protected personal online account. Section 5 provides remedies for violations of the act, including a private right of action. The remainder of the act contains provisions generally included by the Uniform Law Commission.

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