In 2012, the California legislature enacted the Social Media Privacy Act by passing Senate Bill 1349 and Assembly Bill 1844 to restrict access to student and employee social media by post-secondary institutions and employers.
Effective Date: January 1, 2013

Applies to Students’ Social Media

SB 1349 prohibits public and private postsecondary educational institutions, and their employees and representatives, from requiring or requesting a student, prospective student, or student group to disclose, access, or divulge personal social media. The law prohibits a public or private postsecondary educational institution from threatening a student, prospective student, or student group with adverse action for refusing to comply with a request or demand that violates that prohibition.
Assembly Bill 1844

Effective Date: January 1, 2013

Applies to Employer-Employee Relationships

AB 1844 prohibits an employer from requiring or requesting an employee or applicant for employment to disclose a username or password for the purpose of accessing personal social media, to access personal social media in the presence of the employer, or to divulge any personal social media. The bill also prohibits an employer from discharging, disciplining, threatening to discharge or discipline, or otherwise retaliating against an employee or applicant for not complying with a request or demand by the employer that violates the law’s provisions.
Social Media Defined

Social Media means “an electronic service or account, or electronic content, including but not limited to, videos, still photographs, blogs, video blogs, podcasts, instant and text messages, e-mail, online services or accounts, or Internet Web site profiles or locations”.

• The definition encompasses websites and services where electronic content is typically created, shared and viewed (e.g., Facebook, Twitter, Instagram, Flickr, YouTube, Google+, Gmail, Hotmail, and other e-mail account services).

• It also includes electronic content (e.g., photographs, videos, text messages, e-mails) on personal computers and mobile devices, even if that electronic content has not been posted online.

• The definition is generic enough to allow for technological changes in the types of electronic content or electronic services
Prohibitions Under AB 1844

In the context of employment, the Act’s restrictions appear to apply broadly to all managers and supervisors and to restrict certain social media interactions between managers and supervisors and their subordinates in the workplace.

- The prohibitions include requiring or requesting that an employee:
  - Disclose a user name or password for accessing personal social media.
  - Access personal social media in the presence of an institution’s employee or representative.
  - Divulge any personal social media information.
  - Disciplining or penalizing a prospective or current employee for refusing to comply with a request or demand that violates the law.
Prohibitions Under AB 1844

Examples

• Sending a subordinate a “friend” request on Facebook or a request to connect on LinkedIn.

• Engaging another individual (including another employee) to send friend/connection/follow requests and report back on social media content.

• Requiring or asking an employee to log in to and review social media in the supervisor’s presence.

• Requiring or asking employees to share photographs, videos, e-mails or text messages stored on personal cell phones, iPods, iPads, tablets, laptops, desktops or other mobile devices.
What is Permissible Under AB 1844

Examples

• Viewing any publicly available social media content or profiles, such as a public Twitter account, Facebook page, Instagram site, blog, YouTube Channel.

• Accepting unsolicited friend/connection/follow requests from other employees.

• Reviewing or monitoring social media content on institutionally-sponsored sites or accounts.

• Maintaining existing social media relationships with subordinates.
Exclusions From AB 1844

• The law does not affect an institution’s existing rights and obligations to protect against or investigate employee or student misconduct.

• The law does not prevent an institution from taking adverse action against an employee or student for any lawful reason.

• Nothing in the law precludes an employer from requiring or requesting an employee to disclose a username, password, or other information for the purpose of accessing an employer-issued electronic device.