

Legal Update

January 2013

SIGNIFICANT CHANGES IN THE LAW

By Glenn A. Rice and Orley Moskovits Desser

We wish our clients and friends a happy, healthy and prosperous New Year. More than 150 new Illinois laws and many new federal laws take effect in 2013. To ring in the New Year, and in keeping with our FVLD tradition, here is a selection of new Illinois and federal laws that may be of special interest.

Amendment to Illinois Right to Privacy in the Workplace Act Protects Social Networking Account Passwords and Account Access

Effective January 1, 2013, Illinois joins a growing number of states that have passed laws barring employers from requiring employees and job applicants to provide their passwords and access to their social networking accounts such as Facebook. An amendment to the Illinois Right to Privacy in the Workplace Act creates a privacy right for employees and job applicants with respect to their accounts with social networking websites. The new law prohibits employers from asking or requiring employees or applicants to provide their passwords or other account information in order to gain access to their account or profile. The new law also makes it unlawful for an employer to demand access to an employee's or applicant's account or profile on a social networking website.

The law does not, however, affect an employer's right to implement policies controlling use of the employer's electronic equipment, including policies regarding Internet use, social networking site use, and email use. Nor does the new law affect an employer's right to monitor use of the employer's electronic equipment and email use. It also does not prohibit an employer from obtaining information about an employee or an applicant that is in the public domain.

Employers should review their employment policies to ensure that they comply with the new Illinois law. They should also train their management and any other persons involved in the hiring process to ensure that they understand the requirements of the new law and do not run afoul of its prohibitions. For additional legal developments regarding social media policies, please see our prior newsletters "[NLRB Releases Controversial Report Critical of Common Employer Social Media Policies](#)" and "[Limits on Limiting Off-Duty Conduct On and Offline](#)".

New Illinois Cell Phone and Distracted Driving Laws

Illinois has two new laws targeting drivers distracted by cell phone use. Beginning January 1, 2013, Illinois law prohibits drivers of commercial motor vehicles from texting or using a hand-held cell phone while driving. A commercial motor vehicle is one that is used in commerce and weighs 26,001 lbs. or

FVLD®

more (unless a lesser weight is designated by federal regulation or the Illinois Secretary of State), is designed to transport 16 or more persons, or transports hazardous materials.

Another new law, effective January 1, 2013, prohibits all drivers from using cell phones in construction or maintenance speed zones, regardless of the posted speed limit. The law provides an exception for use of wireless phones in voice-operated mode, which can include use of a headset, or those that have a single button activation to initiate or terminate a call. For additional Illinois Laws regarding vehicles in motion, please see our prior newsletter [“Significant Changes in the Law”](#).

New Illinois Sales Tax Evasion Law

Effective January 1, 2013, Illinois has created a new criminal offense for sales tax evasion. According to media reports, the new law was precipitated by a three-year investigation of gas stations and convenience stores in Illinois that resulted in the recovery of millions of dollars of sales tax that had not been paid to the State. The new law provides that a person commits the offense of sales tax evasion when one knowingly attempts to evade payment of sales tax in any matter and commits an affirmative act in furtherance of the evasion. An “affirmative act in furtherance of the evasion” is one that designed to conceal, misrepresent, falsify or manipulate any material fact, or destroy or tamper with documents or materials related to one’s sales tax liability. Commission of the offense of sales tax evasion is punishable as a felony, with the level of felony dependent on the amount of tax at issue

The Federal 2012 Tax Act - Estate and Tax Planning Update

On January 1, 2013, Congress approved the American Taxpayer Relief Act of 2012 (2012 Tax Act), which President Obama has signed into law. The 2012 Tax Act not only prevents several of the tax hikes that were set to take effect this year, but also retains many favorable tax breaks that were due to expire. The 2012 Tax Act raises taxes for high income earners and leaves existing tax rates for most taxpayers. It also extends several tax breaks for business and individuals. For purposes of estate tax rates and exemptions, the 2012 Tax Act raises the top marginal rates for wealth transfer taxes, such as the estate tax, gift tax, and generation-skipping transfer tax, from 35% to 40%. It also permanently extends existing lifetime exemption amounts, which means that an individual can transfer assets up to \$5,120,000 and a married couple can transfer assets up to \$10,240,000 without tax liability. Readers interested in planning their estates should contact counsel to help them make decisions appropriate for their situations.

Changes to Employment-Related Background Screening Notice

The Fair Credit Reporting Act (FCRA) governs consumer reports (also known as background screening reports) prepared by third parties such as private investigators, professional screening companies, and credit bureaus. If an employer engages a third party to conduct a background check to make employment decisions (such as hiring, promotion and retention), it must comply with the procedural requirements of FCRA. Among other things, FCRA permits employers to obtain consumer reports after obtaining written consent from a job applicant or employee.



Effective January 1, 2013, employers that run such background checks must use a new “Summary of Consumer Rights” form as part of the background check process. The new “Summary of Consumer Rights” form directs job applicants and employees with questions about their rights pursuant to FCRA to contact the Consumer Financial Protection Bureau, which is now responsible for enforcing the FCRA instead of the Federal Trade Commission. The new form is available here: [Summary of Consumer Rights](#).

“Opt-Out” Requirements for Robocalls

The Federal Communications Commission (FCC) has amended its Telephone Consumer Protection Act (TCPA) regulations pertaining to unsolicited prerecorded telemarketing calls or “robocalls”. Effective January 14, 2013, robocalls must now include an automated opt-out mechanism – announced at the beginning of the call – allowing consumers to opt out of receiving additional calls. When selected, the opt-out mechanism must disconnect the call and automatically add the consumer’s phone number to the do-not-call list. Robocall messages left on answering machines must also include a toll-free call back number for consumers to call in order to connect to the automated opt-out mechanism. Further, effective October 16, 2013, businesses will also be required to first obtain written consent from consumers before “robo-calling” them. Prior written consent is a written agreement containing the consumer’s number and signature along with a “clear and conspicuous disclosure” that the consumer authorizes the telemarketing calls from the seller. The agreement must also include a notice that signing the agreement is not a condition to purchasing property, goods, or services. Businesses that use telemarketing to reach consumers should evaluate whether their practices comply with the FCC and the TCPA rules.

FVLD publishes updates on legal issues and summaries of legal topics for its clients and friends. They are merely informational and do not constitute legal advice. We welcome comments or questions. If we can be of assistance, please call or write Jon Vegosen 312.701.6860 jvegosen@fvldlaw.com, Glenn A. Rice 312.701.6895 grice@fvldlaw.com, Orley Moskowitz 312.701.6873 odesser@fvldlaw.com, or your regular FVLD contact.

FVLD®

© 2013, Funkhouser Vegosen Liebman & Dunn Ltd.
All rights reserved.