

## **Keeping Employees' Emails and Phones (KEEP) Secure Act** **Virginia's New Worker Privacy Law Takes Effect July 1**

By Susan Richards Salen

Virginia has adopted a new worker privacy law codified in Va. Code Ann. §40.1-28.7:4. Unless permitted by specified exceptions, the law states that an employer cannot be required to release, communicate, or distribute to a third party any current or former employee's ***personal identifying information***. Personal identifying information is defined as: home telephone number, mobile telephone number, email address, shift times, or work schedule. The exceptions are: any applicable provision of federal law that preempts the provisions of this section; any applicable provision of state law; a warrant, subpoena, discovery in a civil case, or an order from a court of competent jurisdiction.

KEEP was intended to be a state law replacement to a federal law that, had it passed, would have prevented the National Labor Relations Board (NLRB) from implementing a rule requiring employers to provide a union or NLRB with employee telephone numbers or email addresses in the event of a representative election. KEEP may not fulfill its intended purpose if the NLRB changes its election rules, which could result in federal pre-emption challenge to the new law.

But what does this mean to an employer? An employer facing a situation involving union activity will have to keep abreast of NLRB rules and regulations regarding disclosure of contact information. For an employer not involved in these activities, the law is not as far reaching as some bloggers and pundits are forecasting. Many have stated that the law will require an employer to get back copies of its employee directory from former employees or limit the downloading or copying of these types of documents. However, KEEP does not ***prohibit*** the disclosure of such "personal identifying information"--it provides that an employer is not ***required*** to disclose such information.

Even so, since KEEP is a statement of Virginia public policy, it could be used as leverage in lawsuits brought by employees and former employees against the employer. It would be prudent to review your employment manuals and internal human resources materials and activities, including personnel directories, to flag areas where personal identifying information is found. Employees should be instructed not to disseminate directories and other materials containing the personal identifying information to third parties. Additionally, an employer could consider having its employees sign, now and

routinely upon commencement of employment, an authorization form that gives an employer permission to share this personal identifying information for purposes of an internal directory, benefits programs or other specific business purposes.

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**Susan Salen is a Shareholder at Rees Broome's Tysons, Virginia office. If you would like additional information, please contact Susan at [ssalen@reesbroome.com](mailto:ssalen@reesbroome.com), or any one of our employment lawyers listed on the Firm's website at [www.reesbroome.com](http://www.reesbroome.com).**

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