

Social Media in the Workplace

A Webinar Series



Presented by:

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Pre-Employment Use of Social Media: Legal Considerations

Our Speaker



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Social Media Screening: Legal Considerations

Jobvite survey of over 800 human resource and recruiting professionals:



Jobvite Social Recruiting Survey 2011

Social Media Screening: Legal Considerations

It is lawful to use social media to screen applicants.

- ✧ No law prohibiting use of social media in the screening process
 - Recent study: 80% of employers
- ✧ **BUT:** employment laws/concepts and common sense provide guidance on restrictions, permissions, and pitfalls
 - Fair Credit Reporting Act
 - Anti-discrimination laws
 - Privacy concepts
- ✧ **SUMMARY:** social media is a useful tool to screen applicants, but it should be used as part of a larger screening strategy/approach:
 - Criminal history
 - Credit report
 - Reference check
 - Employment and educational history verification

Social Media Screening: Legal Considerations

- ✧ **Fair Credit Reporting Act (and state law equivalents) may be implicated:**
 - Regulates background checks for “employment purposes”
 - Authorization and notice requirements for employer and background check provider (consumer reporting agency)
 - Social media background checks fall under FCRA umbrella
 - If you are using an external third party to conduct the search, you and the third party must follow the notice and authorization requirements
 - If you are conducting the searches internally, you do not need to follow FCRA (or inform applicants of the social media search)

Social Media Screening: Legal Considerations

- ✧ **Anti-discrimination statutes may be implicated:**
 - Instant access to information typically not available in traditional hiring process:
 - Protected class status
 - Federally protected classes:
 - Title VII: race, sex, color, religion, national origin
 - ADA: disability
 - ADEA: age
 - GINA: genetic information
 - VEVRAA/USERRA: veteran or military status
 - State FEPAs/local ordinances:
 - Sexual orientation
 - Gender identity
 - Familial status
 - Weight

Social Media Screening: Legal Considerations

- ✧ Employment decisions – including hiring or not hiring – based on an applicant’s protected class status are *prohibited*
 - Discrimination claims – including class claims – may arise from discriminating against an individual or group of individuals based on protected class status during the hiring process
 - Make sure those responsible for hiring know applicable protected classes
 - May be difficult to show *non-use* of information
- ✧ Hiring decision must always be supported by:
 - Legitimate, non-discriminatory reason(s); and
 - Detailed documentation
- ✧ Consult with employment or in-house counsel before making an employment decision based on information found in social media

Social Media Screening: Legal Considerations

✧ **Also may have instant access to unprotected information:**

- Positive and negative attributes, contributions, etc.
 - Community and group involvement
 - Publications
 - Achievements and awards
 - Professional and personal interests
 - Informal and formal writing/communications skills
 - Illegal drug use
 - Negative feelings about previous employers
 - Overtly racist, violent or discriminatory tendencies

Social Media Screening: Legal Considerations

✧ **Privacy concepts will govern:**

- Look only at publicly-available information
- Follow website terms and conditions
- Don't connect with applicant as pretext for gaining additional information
- Never use passwords or try to gain access to private or unauthorized pages
- Never ask for usernames and passwords of applicants

Social Media Screening: Legal Considerations

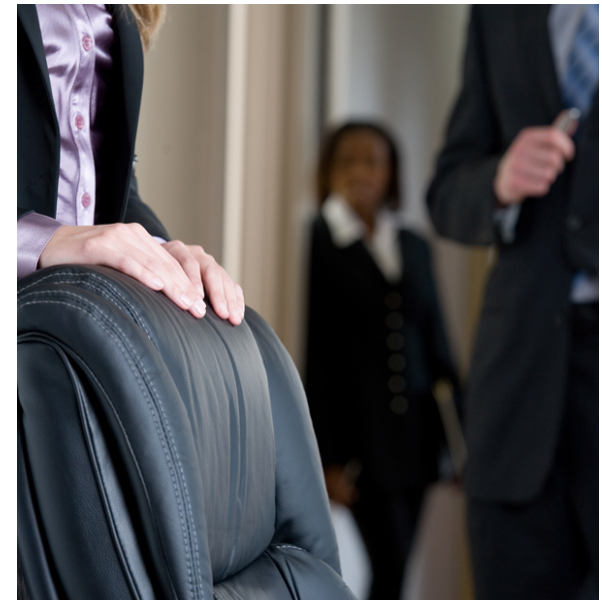
- ✧ Counter the need/desire for this information with consistent policies and practices
 - Regardless if internal or external, consider:
 - Who will be screened? By whom?
 - When in the hiring process?
 - What information will be sought?
 - How will the information be reviewed and stored?

Pre-Employment: Creating the Policy

- ✧ Screen applicants in a uniform manner
 - Create list of social media sites that will be searched for each applicant
 - Create list of lawful information about applicants desired from every search
 - Screen all applicants (or a non-discriminatory subset) using that lawful criteria
- ✧ Have neutral/3rd party conduct search, filtering out protected class info
 - If external 3rd party, make sure adheres to FCRA
- ✧ Don't connect with applicants just to gain access to private profiles
 - Connecting on LinkedIn versus Facebook or MySpace (professional v. social)
 - Following on Twitter (public)
- ✧ Don't request usernames and passwords from applicants
- ✧ Confirm that info belongs/relates to applicant (and not someone w/ same name)
 - Discard or disregard information if identity confirmation is not possible

Pre-Employment: Applying the Policy

- ✧ Train all supervisors and HR professionals on policy
 - Make sure those responsible for hiring know the applicable protected classes
- ✧ Apply policy in uniform and non-discriminatory manner
- ✧ Hiring decision must always be supported by:
 - Legitimate, non-discriminatory reason(s); and
 - Documentation
- ✧ Consult with employment or in-house counsel before making an employment decision based on information found in social media



Social Media Recruiting & Screening: Compliance Tips and Conclusion

- ✧ Emerging workplace issue with little case or statutory law
- ✧ Understand the legal restrictions
- ✧ Don't ignore the risks
- ✧ Use social media as part of larger strategy/approach
- ✧ Craft appropriate policies and procedures
- ✧ Be consistent and non-discriminatory
- ✧ Use common sense
- ✧ Stay current with legal developments
- ✧ Seek guidance from counsel

Don't be the test case!

Sample Policy

Soon, a sample policy will be available for current clients.

To be notified, please e-mail
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If you're **not** a current client, please e-mail
webinars@sterlinginfosystems.com and a sales
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- ✧ Social Media Policies: Post-Hire Considerations – 12/8/11
- ✧ Talking With Your In-house Counsel – 1/10/12

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