



LJN's Franchising Business & Law Alert: Social Media Invades and Modernizes Employment Practices

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Facebook now has more than 1.5 billion users worldwide, and chances are, most employment applicants are members of the ubiquitous social media site. LinkedIn, Twitter and other social media programs also have millions of members. For employers, these sites present a potential treasure trove of information on applicants, but mining this information for use in recruiting, hiring, firing and monitoring of employees is fraught with risk. Nonetheless, some studies show that 40% of employers search social media during the hiring process in order to weed out candidates before in-person interviews. While there are not currently any laws in the United States forbidding employers from gleaning information from social media - whether during the hiring process or at any point in the employment relationship - improper use can get them into trouble.

This article explores practices to avoid and offers guidelines on how to use social media in ways that minimize exposure.

Too Much Information?

Social media is a great tool for employers who want to fully assess the professional qualifications and cultural fit of an individual. On the other hand, employers will often be exposed to information that is illegal to use in making employment decisions such as hiring, disciplining or dismissing candidates or employees. Reviewing social media outlets potentially communicates much more about the individual - including an applicant's race, age, religion, disabilities and national origin, as well as health, lifestyle and privacy issues - which prudent employers would not ask about in an interview or when making employment decisions.

Employers who use social media as a tool to learn more about employees or job applicants must use only information that is outside of protections established by civil rights, anti-discrimination laws and the National Labor Relations Act (NLRA: <http://1.usa.gov/1g3K7AZ>). This is a difficult task because employers cannot simply forget the information they have discovered, and sometimes it's difficult for employers to isolate the factors that led to a decision not to hire a candidate or discipline an employee.

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