

ONLINE SOCIAL MEDIA IN THE HIRING PROCESS

Legal and Ethical Considerations

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OVERVIEW

- ✘ Summary of online social media
- ✘ Types of information available online
- ✘ Legal and Ethical considerations
- ✘ How employers may use online information
- ✘ How employers can protect themselves

SOCIAL MEDIA ONLINE

- ✘ Social Networking Online- what is it?



SOCIAL MEDIA ONLINE

- ✘ Popular Social Network Websites
 - + Facebook
 - + MySpace
 - + LinkedIn
 - + Twitter
 - + YouTube



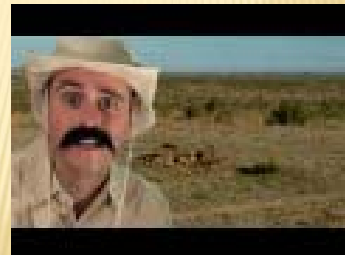
SOCIAL MEDIA ONLINE

- ✘ Facebook (400 Million users)
 - + Users post comments, demographic information and photos



SOCIAL MEDIA ONLINE

- ✘ Second example -- YouTube



SOCIAL MEDIA ONLINE – 2 MAIN TYPES

- ✘ **Comprehensive**
(Facebook, LinkedIn, etc...)
 - + A lot of Personal Info
 - + Contact Info
 - + Education
 - + Employment history
 - + Skills/abilities
 - + Social commentary
 - + Views/beliefs
 - + Photos/Videos
- ✘ **Topic Specific**
(Twitter, Blogs, YouTube)
 - + Limited in scope
 - + Social commentary
 - + Views beliefs
 - + Skills/abilities
 - + Videos

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EMPLOYER USE OF SOCIAL MEDIA

- ✘ Comprehensive sites generally contain useful information for employers such as:
 - + Contact Info
 - + Education
 - + Employment history
 - + Skills/abilities
- ✘ Topic specific sites focus more on personal opinions and beliefs
- ✘ Whether to use one or both types of social media depends on the job's requirements

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LEGAL CONSIDERATIONS

- ✘ Employers must use caution when visiting social media sites to avoid legal pitfalls
- ✘ Accessing and using of certain types of information may result in a lawsuit against the employer



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LEGAL CONSIDERATIONS

- ✘ Employers may not discriminate toward individual applicants or classes of applicants
- ✘ State and Federal civil rights laws protect job applicants (Title VII of the Civil Rights Act, Americans with Disabilities Act, Age Discrimination in Employment Act)
- ✘ Federal laws governed by the Equal Employment Opportunity Commission (EEOC)

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WHAT EMPLOYERS MAY ASK

- ✘ Employers may inquire into anything that is relevant to the job and/or will assist the applicant in performing the expected duties.
 - + Education
 - + Licenses
 - + Training
 - + Skills

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WHAT EMPLOYERS MAY NOT ASK

- ✘ Employers are prohibited from asking for information about the following:
 - + Age
 - + Disability
 - + Genetic/Family Information
 - + National Origin
 - + Pregnancy
 - + Race/Color
 - + Religion
 - + Sex
 - + Political views

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LEGAL CONSIDERATIONS

- ✘ Using social media exposes the employer to information that discloses an applicants protected information
- ✘ Creates potential for discrimination
 - + Disparate Impact Claims
 - + Disparate Treatment Claims

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DISPARATE IMPACT

- ✘ Having a hiring practice that adversely affects a protected class of individuals.
- ✘ Social media users do not necessarily represent the applicant pool.

+ **Example:** 29% of the civilian labor force are individuals over the age of 50 – only 13% of Facebook users are over the age of 50.
 POTENTIAL AGE DISCRIMINATION CLAIM



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DISPARATE TREATMENT

- ✘ Treating an individual differently than other individuals for any reason that is not relevant to the job.
- ✘ Social media sites offer employers (as well as the entire world) an uncensored peek into how job applicants act in all environments, including unguarded moments.
- ✘ **QUESTION:** Would you evaluate these two individuals differently?

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DISPARATE TREATMENT



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HOW TO YOU USE SOCIAL MEDIA

- ✘ **Bottom line:** Online social networks have their risks but are arguably the best way to reach out to passive applicants, verify applicants' resumé claims, gain insight into their personalities
- ✘ Employers must be aware of the legal risks – no laws expressly govern the use of social media
- ✘ Employers must understand what information is permitted and what information is prohibited under both state and federal law
- ✘ Social media should not be used exclusively
- ✘ Social media should not be used randomly

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SOCIAL MEDIA POLICY

- ✘ Employers should develop a comprehensive hiring policy that expressly provides for the use of online social media in the hiring process
- ✘ The employer should work with legal counsel due to the fast changing legal landscape of social media
- ✘ Policy should be tailored to fit the employers hiring practice

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SOCIAL MEDIA POLICY

- ✘ Begin by asking whether or not the use of online social media is really necessary in a particular situation, or whether an alternate interview approach will be equally effective
- ✘ Example:
 - + if drug use is a concern, there are well established approaches to screening candidates that pose no legal risk whatsoever (versus speculating on whether or not that was a "just a cigarette" pictured on their Facebook page)

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SOCIAL MEDIA POLICY

- ✘ If employer chooses to use online social media, establish safeguards to protect against the use of protected class information
- ✘ Don't use social media uniformly
- ✘ Example of a safeguard:
 - + Consider using one employee to search social media sites for applicant information – and have that employee only forward on the relevant information to the person making the hiring decision.

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SOCIAL MEDIA POLICY

- ✘ Consider whether employer should use solely comprehensive social media (Facebook, etc...), topic-related social media (Twitter, etc...) or both – consider the specific job
- ✘ Example:
 - + Employers looking for applicants who have advanced degrees may not have a skewed applicant pool if they search through online social media considering current online user demographics (versus a potentially skewed applicant pool if the job requires no degree)

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SOCIAL MEDIA POLICY

- ✘ Do some statistical research
 - + Compare conventional interview practices from the past with current practice using social media – are the demographics different/same
 - + Watch for a rising trend of screening members of a protected class based upon information from social media

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SOCIAL MEDIA POLICY

- ✘ Maintain records of all hiring procedures
- ✘ Document basis for decisions
- ✘ Do not allow disgruntled applicants (or plaintiffs' attorneys) to speculate that you used irrelevant information obtained online against them

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SOCIAL MEDIA POLICY

- ✦ Use legal counsel each time you adopt or amend your hiring policy so that the current legal landscape is reflected in the final policy

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