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Guest column: Tread carefully when using social media in the hiring process



By Nancy Cornish Rodgers

With the growth of social media, some overly clever employers decided to treat Facebook and other websites as a gold mine of valuable information in their hiring process. Some employers have even strong-armed job applicants into providing access to personal Facebook sites as a routine step within the interview process.

Is it legal? Probably, although various legal interpretations keep the debate alive.

And here's a better question: Is it smart? Not always.

Think about the pictures and information posted on social media sites. You may learn a person is from a different country or is older than you previously thought. You may discover an applicant has a disability or is pregnant. You may discover a person is in a same-sex relationship.

This is information that should not be sought during an interview process. And rightly so. By avoiding those questions, an employer can show that the hiring process was not discriminatory and that an applicant was rejected on legally permissible grounds, rather than because of race, disability, age, sexual orientation, or other traits protected under law. Applied in the social media context, when an employer discovers impermissible information about an individual from a social media site, the employer may have trouble arguing that the legally protected information did not influence the hiring decision.

Despite the risk, some employers still want to know the content of applicants' social media sites. For those employers, here are three steps to take when utilizing social media sites in the hiring process.

First, evaluate the need: Do you really need information from a social media site?

More often than not, the employer can gain the information it needs from interviews, reference checks, and current background tools. A social media site usually only serves to give the employer what it wants – a peek into an applicant's personal life. Imagine comparable interview questions: Who are your friends? When was your last vacation? Can I see pictures of your family? How is your relationship with your wife?

Sure, an employer is always looking for the right "fit," and personal traits are a part of that fit. And, it's possible that a review of an applicant's social media site may reveal discriminatory comments, gossip about co-workers, or evidence of drug use. However, these possible advantages need to be balanced against the legal risk that the employer may be accused of discriminatory hiring practices. If the employer is fishing for irrelevant personal information rather than looking for objective job-related criteria, then the employer should abandon a social media site review.

Second, if you believe it's important, obtain permission from the applicant to review social media sites AFTER extending a conditional offer of employment, thus establishing that any impermissible information obtained was not considered in the decision to make a job offer. Request access that does not require the applicant to give you any passwords. Even then, use other pre-hiring screening tools first, such as employment tests, reference checks, and permissible criminal and credit checks.

Third, when conducting the review of an applicant's social media site, make sure the review is conducted in order to confirm information already obtained and to gain information specifically related to the applicant's ability to perform the job duties. The reviewer should document the results of the review and focus as much as possible on objective, pre-set criteria related to the applicant's ability to perform the job duties. If staffing allows, the person reviewing the social media site should be different from the person making the hiring decision, and only the objective, pre-set criteria should be communicated from one to the other.

Through social media, hiring managers can obtain information never previously available. But, employers must carefully evaluate the risks and benefits of using social media sites in the hiring process. Adhering to sound social media pre-hiring review procedures and policies will help protect employers from claims of unlawful discrimination in their hiring process. However, unless you truly need social media information to evaluate job readiness, you should leave the examination of an individual's private social media websites to high school sweethearts and old friends.

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