



Life Online

Legal ramifications and disadvantages of social networking

By Zaher Karp

The Internet promises social connectivity but at the daunting cost of privacy. Social networking sites, like Facebook or MySpace, occupy a sizeable lot of virtual real estate and allow personal information to be viewed with ease. The open nature of these sites could stand in stark contrast to the closed format of an employment application, yet HR departments throughout the United States have utilized these sites. The employment search, already fraught with the challenges of background screening, drug testing, credit checks and an armory of other verifications, is now further complicated by the availability of personal information online.

Employers need to be careful when using these sites, as they can potentially lead to discrimination claims. Federal and state laws dictate that employers must prove that they have based hiring decisions on nondiscriminatory reasons — information that would not have been available through an application. **Jon Anderson, of Godfrey & Kahn, S.C.**, honed in on the point that once an employer has accessed a potential hire's profile, they are unable to control what information they view, preventing a defense of ignorance of personal facts.

"Federal and state fair employment laws serve as a reminder that accessing social networking sites and using information gleaned on such sites must be done carefully and with informed caution. What you learn from these sites might be interesting but could jeopardize otherwise legitimate employment decisions," he counsels.

The tides of information affect both shores, not only the potential employee, but also the

hiring organization. "Many employers may think that no one will ever know if they check out an applicant's Facebook page or blog. That's just not true. In this age of electronic

discovery, a plaintiff's lawyers commonly ask to inspect a company's computers. And, as we all know, online tracks just never go away," says **Daniel Barker, Murphy Desmond, S.C.**

There are also legal concerns when organizations use these sites, as many of them limit the site to noncommercial use only. Barker explains that "it could be claimed that [the organization] violated a federal anti-hacking law that prohibits the unauthorized use of computer information."

However, these sites can also be used to bolster one's image, using them, as Anderson suggests, "affirmatively for their potential 'marketing' value. For example, applicants could enhance their image by posting virtual resumes."



Daniel Barker
Murphy Desmond, S.C.

Joseph Gumina, Whyte Hirschboeck Dudek, highlights the benefit of tapping into a specific section of the available labor pool — the Millennial generation.

"Employers are using these online media sites to bridge the widening generational gap among baby boomers, Gen Xers and Millennials that is appearing in today's workplace," says Gumina. Anderson also warns, "Employers who check social networking sites have to be careful concerning the information they have access to and need to be able to sift through the posted information to determine what might be relevant to an assessment of future job performance and success. Isn't that the goal of any hiring process?" ■



Joseph Gumina
Whyte Hirschboeck
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