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Alejandro Valle, Esq.

www.gshllp.com

(317) 686-9800

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Facing The Facts About Facebook: Know The Risks Of Using Social Networking Websites To Conduct Job Applicant Research

By: Alejandro Valle, Esq.

Employers interested in hiring only the most qualified and desirable individuals naturally want to use every tool at their disposal to weed out potential bad hires. More and more, employers are turning to the Internet, and specifically to "social networking" websites (such as MySpace and Facebook), to conduct research on job applicants. However, it is important to first consider the possible legal and practical implications of doing so.

The information that can be learned about applicants through social networking websites is potentially very interesting to employers. For example, information may be available about: the accuracy of resume data; the applicant's

communication skills; evidence of criminal behavior or drug/alcohol use (assuming it is permissible to consider these pursuant to state law); and the applicant's general professionalism and judgment. The potential availability of this information with just a few keystrokes makes the temptation great for the employer to engage in such research methods. Indeed, a survey of hiring managers conducted by an Internet job search website revealed that more than 10% of the responders had used social networking websites to conduct applicant research, and more than 60% of that group (over 6% of the total survey responders) had decided not to hire applicants based upon information discovered in the social networking websites.

Employers need to be careful, however, regarding the use of social networking websites for making hiring decisions. There are both practical and legal reasons for caution.

First, it is possible that a search reveals a different person with the same or similar name, and not the actual applicant in question. Even if a profile does belong to the same applicant, an employer cannot always know whether the applicant actually wrote or authorized the posting in question. An employer later seeking to defend a hiring decision wants to be able to show that it made its decision on the basis of reliable and accurate information, instead of information that actually pertains to another individual or that possibly even misrepresents the true qualifications of the actual job applicant in question.

Another consideration is that job applicants might learn "through the grapevine" that certain employers use social networking websites to research job applicants. Such a reputation might make those employers less attractive to potential applicants, and thus hinder recruiting efforts.

Perhaps the most significant risk, legally speaking, is the possibility that an applicant would argue he or she was discriminated against based upon information learned by an employer through a social networking website, especially if such research was done with less than the full consent of the applicant. Employers should develop and use written policies and procedures regarding use of social networking websites for job applicant research. For example, it is advisable that an employer be able to document that it applies the same degree of scrutiny into the social networking web profiles of all candidates equally. Employers want to be able to show that individuals from certain races, genders, religions, etc., are not having their website profiles reviewed disproportionately in comparison to applicants outside of those groups. A set list of

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the steps used to evaluate candidates might prevent allegations of discrimination by applicants who ultimately are not hired.

Employers also should not use false identities or other forms of pretext to gain access to social networking websites for applicant research purposes. A recent survey by the National Association of Colleges and Employers, or NACE, reveals that over 80% of the responding college students had profiles on social networking websites, and yet nearly half of those did not expect or were unsure about potential employers contacting them through such profiles. Most social networking websites have privacy statements that limit the use of information contained in member profiles for the private use of its members. Ultimately, if a lawsuit resulted from a non-hire decision, the employer likely would need to show that it had a legitimate basis for being in the website and that it used information learned in the website in a manner consistent with the website's use restrictions. The safest approach is probably to obtain consent from applicants before conducting any Internet-based research, perhaps even after a contingent offer already has already been extended (i.e., contingent on the results of the background check and any Internet research). In this regard, it is probably best to treat Internet-based research and research into social networking websites the same as any other pre-employment background or reference checks.

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