

All a Twitter about Linking In to Social Media in the Hiring Process!

By Robin Aronson

In the “old days”, which might be defined as just a few years ago, employers had limited access to information about job applicants. Information was mostly gleaned from resumes, job applications, reference checks, limited background checks, and maybe a school transcript. Nowadays, with the simple click of a mouse, the availability of information is greatly expanded and often times can be quite “interesting” to say the least. Have you ever wondered what an applicant does in their free time, why they are really looking for a job, or what they said about their past employer?

Social media websites often provide information about an applicant’s family, friends, religion, marital status, ethnicity, race, age, sexual orientation, club memberships, political views, habits, activities, etc. As the use of social media continues to expand, some employers have begun reviewing the social media sites of job applicants, hoping to find information that may assist in making a decision about who to hire. Some of this information may very well provide valuable insight about the applicant, their work ethic and ability to perform the job. While tempting to take advantage of information on social media sites, there are risks associated with doing so, including claims of discrimination based upon protected class, invasion of privacy, and violation of the [Fair Credit Reporting Act \(FCRA\)](#).

Information gleaned about an applicant’s protected status that is otherwise not available in the application materials may be the basis for a discrimination claim if the candidate is later not hired, regardless of whether the information was actually used in the hiring process. Moreover, while it would be difficult to argue that privacy rights have been invaded when an applicant uses a social media site that is publicly available, such is not the case if employers use other employee’s passwords to access the sites or engages third parties to enter the social media sites. Speaking of third parties, an employer using a third party to conduct a background check on applicants and that uses social media sites, must ensure that the FCRA requirements are followed, including the applicant’s authorization for the background check.

Despite the potential risks, if you decide to use social media as part of the hiring process, consider doing the following to minimize liability:

- Disregard information that is not job related.
- Have someone not involved in the actual hiring decision making process conduct the research and in doing so filter out any information that should not be considered by those making the hiring decision.
- Conduct social media research later in the hiring process. Check social media profiles after an applicant has been interviewed, when his or her membership in protected groups is already known.
- Be consistent. If you decide to use social media sites, use the sites for all applicants and not just a select few. Establish a written policy about when and how social media will be used.
- Document adverse decisions. If you use social media sites to evaluate applicants, ensure you can articulate a legitimate non-discriminatory reason unrelated to the applicant's protected status for rejecting an applicant.
- Consider the source. It should come as no surprise that information on social media sites may not be reliable or accurate. Is the posting on a site done by the applicant or by an unknown third party?
- Know the law. [RCW 49.44.200](#) limits an employer's ability to require an applicant or employee to disclose login information for personal social networking accounts, to access the account in the employer's presence, alter settings, or add a person to the list of contacts associated with their account. An employer cannot take adverse action on account of an applicant's refusal to provide login information or access. A violation can result in a civil action with the possibility of statutory damages, actual damages and attorney fees.
- Be aware that other laws may apply such as FCRA.

Carefully weigh the risks versus the benefits in making the decision to use social media in the hiring process and familiarize staff with the laws. It is crucial to use a variety of sources to vet an applicant, and not just rely upon social media, to ensure information is reliable and accurate.