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# Social Media in the Hiring Process: Uncovering Top Talent or Lawsuits

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### Cover Page Footnote

1 Roger W. Reinsch, William H. Ross, Amy B. Hietapelto, "Employer's use of social media in employment decisions: Risk of discrimination lawsuits," *Current Topics in Management* 18 (2016): 155. 2 Facebook, "Number of Monthly Active Facebook Users Worldwide as of 1st Quarter 2017 (in Millions)," Statista, accessed 22 July, 2017. 3 LinkedIn, "Number of LinkedIn members from 1st Quarter 2009 to 3rd Quarter 2016 (in Millions)," Statista, accessed 22 July, 2017. 4 "Number of Employers Using Social Media to Screen Candidates Has Increased 500 Percent over the Last Decade," press release, April 28, 2016, on CareerBuilder website, <http://www.careerbuilder.com/share/aboutus/pressreleasesdetail.aspx?ed=12%2F31%2F2016&id=pr945&sd=4%2F28%2F2016>, accessed 22 July, 2017. 5 H. Kristl Davison et al., "To Screen or Not to Screen? Using the Internet for Selection Decisions." *Employee Responsibilities & Rights Journal* 24, no. 1 (2012): 4. 6 Ibid., 5. 7 Gerald E. Calvasina, Richard V. Calvasina, Eugene J. Calvasina, "Social Media and Human Resource Staffing: Legal, Policy and Practice Issues for Employers." *Journal of Legal, Ethical and Regulatory Issues* 17, no. 2 (2014): 53. 8 Lisa S. Paik, Comila Shahani-Denning, Rodger W. Griffeth, "An Examination of Attractiveness Biases in the Context of hiring Through Social Networking Sites," *Journal of Organizational Psychology* 14, no. 1 (2014): 60. 9 Victoria R. Brown, E. Daly Vaughn, "The Writing on the (Facebook) Wall: The Use of Social Networking Sites in Hiring Decisions," *Journal of Business & Psychology* 26, no. 2 (2011): 222. 10 Reinsch, Employer's Use of Social Media in Employment Decisions, 160. 11 Calvasina, Social Media and Human Resource Staffing, 56. 12 eMarketer, Squarespace, "Number of Facebook Users by Age in the U.S. as of January 2017 (in Millions)," Statista, accessed 22 July, 2017. 13 Davison, To Screen or Not to Screen, 5. 14 Philip L. Roth et al., "Social Media in Employee-Selection-Related Decisions: A Research Agenda for Uncharted Territory," *Journal of Management* 42, no. 1 (2016): 274. 15 Elizabeth C. Alexander, Fred Mader, Deanna Mader, "College Students Use Social Networking Sites for Sharing with Friends, but Guess Who Else is Looking?," *Atlantic Marketing Journal* 5, no. 2 (2016): 74. 16 Davison, To Screen or Not to Screen, 16. 17 Reinsch, Employer's Use of Social Media in Employment Decisions, 170-171. 18 Roth, Social Media in Employee-Selection-Related Decisions, 291. 19 Brown, The Writing on the (Facebook) Wall, 221. 20 Reinsch, Employer's Use of Social Media in Employment Decisions, 173-174. 21 Calvasina, Social Media and Human Resource Staffing, 57-58. 22 Brown, The Writing on the (Facebook) Wall, 224. 23 Davison, To Screen or Not to Screen, 8. 24 Brown, The Writing on the (Facebook) Wall, 220. 25 Calvasina, Social Media and Human Resource Staffing, 58. 26 Dave Winsborough, Tomas Chamorro-Premuzic, "Talent Identification in the Digital World: New Talent Signals and the Future of HR Assessment," *People & Strategy* 39, no. 2 (2016): 31. 27 Roth, Social Media in Employee-Selection-Related Decisions, 292.

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# Social Media in Hiring

By Ian Anderson

**S**OCIAL MEDIA (SM) is still a very new tool in the hiring process. Policy and practice (regarding SM use for screening candidates) widely varies between companies, as well as industries.<sup>1</sup> SM can be an effective tool in making hiring decisions; however, hiring managers must understand the SM hiring landscape, potential legal pitfalls, and SM screening best practices to reap the hiring benefits. Ignorance to modern hiring trends will cost employers either top talent or protection from lawsuits.

## THE SOCIAL MEDIA LANDSCAPE

Over the past decade, SM use has exploded. Today, more people than ever carry access to various SM profiles (e.g., Facebook, Twitter, Instagram, LinkedIn). From 2009 to 2016, Facebook has seen users jump from 197 million to 1.86 billion.<sup>2</sup> LinkedIn has witnessed worldwide membership rise from 37 million to 467 million.<sup>3</sup> Alongside the increase in SM users, hiring managers have intensified SM use in the hiring process. According to CareerBuilder, 60 percent of employers stated they used SM to research employee candidates in 2016; in 2006, only 11 percent of employers agreed to the same statement.<sup>4</sup> As SM continues to be a key component in society, more companies will turn to SM as a tool for finding the best employees.

In a Human Resources (HR) department's search for top-rate talent, two major concerns are cost and time. Searching Facebook or a Twitter feed is fast, easy, and free. As the wealth of information job candidates post online increases, using SM to screen applicants becomes a more viable option for employers.<sup>5</sup> However, using SM for applicant screening opens up additional potential for legal action when compared with traditional hiring methods.

## LEGAL PITFALLS

**Discrimination.** The first major legal pitfall arising from the use of SM in a hiring context is the immense potential for discrimination accusations. Traditional résumé layouts limit the amount of demographic information available and include only job relevant information. SM screening acts directly against the precaution of limiting information available to evaluators.<sup>6</sup> Viewing Instagram photos or a Facebook profile opens a wealth of information, and most of this information places candidates in protected statuses; e.g., race, gender, age, religion, disability, national origin, pregnancy.<sup>7</sup> Concerns have also been raised regarding the possibility of attractiveness bias.<sup>8</sup> Even the most objective manager is open to subconsciously applying personal bias.<sup>9</sup>

To combat possible discrimination charges, employers must be familiar with nondiscrimination statutes before utilizing SM in hiring. A few primary statutes to consider are the following: (a) Title VII of the Civil Rights Act of 1964, (b) Pregnancy Discrimination Act of 1978, (c) Age Discrimination in Employment Act of 1967, (d) Title I and V of the Americans with Disabilities Act of 1990, and the (e) Civil Right Act of 1991.<sup>10</sup> In addition, some states have "lifestyle discrimination" laws that add an additional layer of protection to job candidates. For example, if a candidate was removed from consideration for excessive drinking, smoking, or gambling—all legal activities—the employer could come under fire for "lifestyle discrimination."<sup>11</sup> Before utilizing SM in screening applicants, understand all related federal and state discrimination laws.

**Varying SM presence.** The second pitfall occurs due to varying amounts of SM by applicant, or some applicants may have no SM presence. SM use varies significantly by age. As of January 2017, the number of U.S. Facebook users in the 25-34 age group totaled 52 million. In comparison, the 45-54 age group reached 32 million, and the 55-64 totaled only 14 million.<sup>12</sup> Additionally, due to economic and financial factors, some job seekers may not have access to SM.<sup>13</sup> Researchers suggest the lack of available SM information could have negative consequences,<sup>14</sup> and younger hiring managers may place more significance on SM as a hiring tool.<sup>15</sup> If job seekers are evaluated differently based on SM presence, employers chance unequal treatment leading to legal action.<sup>16</sup>

**Negligent Hiring.** The third and final pitfall is known as negligent hiring. An injured party can sue the employer based on a claim that the employer knew an employee was a potential danger to third parties, e.g., customers, clients.<sup>17</sup> By using SM in the hiring process, employers are more likely to find information that could make them liable in a negligent hiring suit. While obtaining unnecessary information can lead to claims of discrimination, ignoring certain information can lead to negligent hiring.

## EFFECTIVE SOCIAL MEDIA HIRING

After covering just three legal pitfalls, SM during hiring feels more akin to navigating a minefield than using a modern cost-effective technique to screen applicants. While legal hazards to SM use exist, employers can protect themselves by adhering to the following recommendations: (a) establish a company SM policy, (b) insulate the decision maker, and (c) be consistent for all applicants.

**SM Hiring Policy.** HR should implement specific policy detailing how to employ SM use in the hiring process. As part of this policy, HR should designate specific skills, knowledge, and attributes that qualify for SM screening.<sup>18</sup> Any aspect screened for must be linked to the specific job description the candidate is applying for (e.g., HR could use SM to research candidates' communication skills when filling a SM manager position).<sup>19</sup> A SM policy should also include direction for retaining records of all SM screening and its application to hiring decisions; i.e., screen shots should be taken and notes attached to applicable information.<sup>20</sup> Methodic documentation and designated policy will prove invaluable in protecting a company against inequality claims during hiring.

**Insulating the Decision Maker.** Another effective layer of legal protection is ensuring the decision maker is ignorant of potentially damaging information. HR should train specific individuals to perform SM searches and screening.<sup>21</sup> These individuals would be responsible to filter only pertinent hiring information to decision makers. The hiring decision cannot be influenced by bias or discrimination if the manager deciding has no access to harmful information. Furthermore, when a candidate is removed from consideration, the reasons should be clearly documented alongside the supporting material.<sup>22</sup> Also, a word of caution, when acting on material gained by SM, remember that every post, tweet, and message may not be an accurate reflection of a candidate—both for good or for bad.<sup>23</sup>

**Consistency.** The final recommendation for appropriate SM use in hiring is maintaining consistency for every applicant. Inevitably, variances in quality and quantity of information will occur between candidates.<sup>24</sup> Once suitable SM policy and practice

has been established, employers must consistently apply it companywide.<sup>25</sup> Inconsistencies lead to legal-action vulnerabilities, even with established policy and practice. If SM screening is performed for one applicant, it must be performed for every applicant.

## CONCLUSION

SM is a practical and cost-effective tool for HR and hiring managers to utilize. However, like every great practice, it comes with its own unique balance of risk and reward. Claiming ignorance to nondiscrimination laws will not protect a company from justified lawsuits. HR departments must establish clear procedures for the use of SM when evaluating job applicants. Effective SM policy will include methodically documenting SM searches, ensuring consistency for all candidates, and insulating decision makers from unnecessary information.

While SM appears to be an increasingly common avenue for candidate evaluation, modern SM screening has yet to provide a proven track record for hiring the best candidates.<sup>26</sup> Much of the current literature on this topic concedes that additional research is needed to verify SM use as an effective tool.<sup>27</sup> Independent of research validation, each employer holds accountability for the responsible use of SM during hiring. At the end of the day, the simple cost for compliance of effective and legal SM use is convenience.

