



Employer Legal Issues For Online Social Networking

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The use of online social networking in the workplace has become fairly commonplace. In fact, Human Resources specialists often troll the internet researching for any information that can be uncovered concerning current and potential employees. Employees often spend time during work and off hours interacting with co-workers via internet-based social networks. Although personal use of social networking websites is inevitable, uses of online social networks by employers and employees may not always be proper. Employers risk the chance of legal issues such as negligent hiring, harassment claims, discrimination claims, and other legal issues.

An employer may be subject to *negligent hiring* claims if the employer fails to act on information it discovers about its employee on a social networking website. A typical claim for negligent hiring may arise where an employee injures someone, and the employer knew or should have known about the employee's propensity for causing injury to others. This may occur when the employer knew about that employee's propensity for violence based on information about that employee discovered by the employer on a social networking website. By discovering information about an employee on a social network and not acting upon that information, the employer increases the risk of claims brought against it. An employer, however, has to walk a tight line so as to avoid discrimination claims which may arise from adverse action taken as a result of the information discovered on an online social network.

An employer may subject itself to *discrimination* claims by using online social networks to evaluate employment candidates. It is well established that employment decisions based on a candidate's sex, sexual orientation, age, or race are improper and subject to protection under federal law. The first issue here is individuals of varying races and ages are not equally represented on all social networking websites. As such, employers may have a disproportionate amount of information for candidates falling into one category, as opposed to another. For example, individuals in the age range of 18-34 are overrepresented on Facebook, but underrepresented on LinkedIn, whereas those over 50 are underrepresented on Facebook, but overrepresented on LinkedIn. The second issue here is that an employer making decisions based on a candidate's sex, sexual orientation, age, or race, as discovered in an online social network, may result in discrimination claims if the information was used to make an employment decision. Decisions should be made based on job qualification.

An employer may be subject to *harassment* claims by using and permitting its employees to use social networking websites during working hours. People typically feel cavalier when socializing with others online, especially when doing so under a pseudonym (i.e. screenname). As such, the risk of making inappropriate comments that may rise to the level of harassment likely increases. The likelihood of a harassment claim increases even further when supervisors interact with employees that they supervise. Courts have held that even a single harassing event, if severe enough, can create a hostile work environment, subjecting employers to claims.

It is nearly certain that online social networking will continue to play an ever-increasing role in employers' vetting and review processes, as well as the daily lives of its employees. Employers should be cognizant of social networking websites use within its domain. To help avoid some of the aforementioned legal issues, employers should have clear rules on the use of such websites. Employees should generally not be allowed to use online social networks during work hours. The employer may also clearly define the nature of the information that may be collected in a candidate's vetting process, and

expressly reject the use of any other information for any purpose. Also, an employer may clearly define which personnel may access online social networking information, and clearly define for that limited purpose that information may be used or accessed. It may also be useful to remind management and employees that online interaction may still subject to all of the employment laws, regulations, and company policies. By creating clear and definitive policies, employers will reduce the risk of legal claims resulting from use of online social networks in the workplace.