

SOCIAL MEDIA: EMPLOYERS SHOULD EXERCISE CAUTION TO REDUCE POTENTIAL CLAIMS

Although it is lawful to use publicly available information through the social media, employers should exercise caution to reduce potential claims.

The candidates' social media sites might unveil information that is unlawful to use. Although most employers have developed and implemented employment policies that prevent the recruiting person from learning potentially discriminatory information about a candidate, social media sites create the opportunity to view that type of data.

If the hiring person has accessed to that information, it would be difficult to prove that the employer were not influenced by it. Once an employer review a candidate's online profile, a court would assume that the employer is aware of that person's characteristics, which are often part of their online postings.

Therefore, an employer should develop and implement a stringent screening process that limits the solicited social media information. It is unlawful seeking and using information as the race, age, religion, gender, national origin, veteran status, disabilities, pregnancy status, and genetic information.

It is recommended that the hiring decision maker does not perform any search of the candidate's information. Hence, the employer should be ensured that the decision maker has taken into account only the relevant and permissible information about the candidate.

It has also been suggested as a good practice to wait until after the employer have met the candidate face to face; to conduct the same searches at the same point in the process for every applicant; to print or save screen shots if the recruiter sees something that causes him to question the candidate's candor, professionalism or judgment, and if an employer uses an outside company to perform the background check, it must adhere to the requirements of the "Fair Credit Reporting Act."

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