



Recruiting with Social Networking Sites: **What you DO know can hurt you**

By Nick Fishman and Jason Morris

Social networks are a fantastically exciting tool for recruiters. Sites such as LinkedIn and Facebook offer new ways to find and connect with passive candidates. Furthermore these sites, particularly Facebook, appear to offer insights into a person's character. However, recruiting with social networks is an area with real—but rarely recognized—legal risks. These risks can place the recruiter in the odd position where what they know may actually hurt them.

The Good News and a Caveat

"Social networking is the bedrock of our candidate relationship management strategy. We leverage social media in creative ways to source talent and build relationships with fans that may one day be candidates," said Cindy Nicola, Vice President, Global Talent Acquisition at Electronic Arts. "It's one of the great ways to connect to talented people."

If you use only social networking to find candidates, that may have a disparate impact on groups outside these networks.

Stephanie E. Lewis, an attorney at Jackson Lewis, LLP agrees.

"Using social networking sites can be an effective recruiting method. I wouldn't advise clients to avoid these tools, although there are some issues they ought to be aware of."

The caveats start with concerns about disparate impact. If you use only social networking to find candidates, that may have a disparate impact on groups outside these networks.

"Make sure social networks are not the only way you are sourcing talent," cautions Lewis. "Your motives may be honorable, but if your sourcing processes are not giving minorities and other protected groups an equal chance of being hired you are asking for trouble."

This is a particularly big issue for federal contractors because Executive Order 11246 requires them to maintain all employment related records for two years—which is difficult if you are using social networking for sourcing. Recruiters are well aware of the lengths they go to be compliant in documenting sourcing through job boards, but they rarely bring the same discipline to sourcing with a social network like LinkedIn.

Where Recruiters Get into Trouble

However, the really big problem with social networking is not in using it to find candidates, it is when recruiters use online information they stumble across to assess people.

The media is full of entertaining stories such as that of "Stacy the Drunken Pirate." Stacey, an aspiring teacher, posted a picture of herself apparently drunk and dressed as a pirate on her MySpace page. That picture contributed to her being suspended from a student teaching program for being a poor role model.

Stacy is not alone. A survey by CareerBuilder showed many employers have rejected candidates based on information they found online such as:

- information about themselves drinking or using drugs
- provocative or inappropriate photographs or information
- poor communication skills
- lies about qualifications
- an unprofessional screen name

...many employers
have rejected
candidates based on
information they
found online

Most managers have heard gleeful stories of people being caught due to dumb things they've posted online. But recruiting professionals need to be aware that using information this way can get them into trouble.

First, if employers are eliminating candidates based on what they learned on Facebook they are already violating the service agreement they accepted when they joined Facebook. Reputable companies simply do not want to willfully violate this sort of service agreement.

Secondly, there is no guarantee the information is accurate—you might guess the picture of a candidate sharing noodles with Chairman Mao is Photoshopped, but what about those other pictures? Should recruiters be eliminating candidates based on information they cannot prove is accurate and which the candidate has no opportunity to refute?

Thirdly, many of the criteria mentioned in the CareerBuilder study are simply not legitimate reasons for rejecting a candidate. How someone communicates to friends on Facebook is no way to assess their business communication skills. Pictures of someone drinking may not be flattering but drinking is not illegal in the U.S. and companies cannot legally use the fact that someone is seen drinking as a reason to eliminate them.

It seems that the wealth of information on social networking sites has led some companies to depart from professional recruiting practices. Companies must follow a rigorous process of assessing people for qualities relevant to on the job performance. Fishing for dirt on someone's Facebook page is not a professional or legally defensible approach.

But it's not just making bad use of social networking that can cause trouble; other risks should be considered.

You Can't Un-ring That Bell

As recruiters are well aware, extensive regulation protects people from discrimination. The relevant legislation includes:

- **Americans with Disabilities Act** – you can't discriminate against someone because they are disabled.
- **Age Discrimination in Employment Act** – you can't discriminate on the basis of age.
- **Title VII** – you can't discriminate based on protected characteristics such as race or religion.

If a recruiter is searching around someone's Facebook page they may find information about an individual that will open them to charges of discrimination. Having good intentions is not enough – even the *appearance* of discrimination can be enough to spark a suit.

...even the *appearance* of discrimination can be enough to spark a suit

How might this unfold? A candidate is going through the recruitment process when the recruiter finds something incriminating on their Facebook page and drops the candidate. The candidate says, "I know why you dropped me: you were looking at my Facebook page and saw I was (fill in the blank)—that's discrimination." A lawsuit ensues.

This is why what you know can hurt you. The recruiter does not want access to information that might cast doubt on the legality of their hiring decisions.

Ethical Issues

There is a tendency to focus on legal issues, but there is also an ethical side to using information found on social networking sites to assess people. In an ideal world people would know how to manage their personal brand, but if someone is young and naïve (or old and naïve) they may put unflattering information about themselves on a social networking site. People's private lives, inside jokes, and silly mistakes can all become uncomfortably public thanks to the Internet. Does your organization really want to be snooping into someone's private life even where legal issues are not in question?

Nicola said, "We use different channels for different purposes. Facebook, for example, is a way for us to build a community of people. We do not use it as much for sourcing and certainly not as a tool to do character assessments. As an organization we just don't want to go to the place where we are judging people negatively because of something that is on a site."

What to Do

There is no question that social networking is a great way for finding talent, but recruiters and hiring managers should not root around someone's online data as a way to eliminate candidates. The risks of violating or being accused of violating a candidate's legal rights are too great. There have been lawsuits and more will surely follow.

Furthermore, there is no reason to use unreliable online information when well established legal processes for checking candidates exist. The CareerBuilder survey indicated that one reason candidates were eliminated is that the company suspected they were using drugs. If this is a concern, then don't go snooping through Facebook pages. Legally defensible drug screening programs can be fairly applied as part of the standard process. The survey also indicated concern about inaccurate qualifications, which is a valid concern but one easily handled by a professional background check.

The basics of effective, legal and ethical recruiting are not mysterious. There needs to be a consistent process of assessing factors relevant to the job. Typically this involves resume screening, structured interviews, perhaps some assessment tests and a background check. The temptation of using social networking sites as screening tools is leading some companies into legal hot water.

Recruiters need to put in place a written policy that they will not use information from social networking sites for assessing candidates. Recruiters must let hiring managers know that eliminating candidates based on what they see on a social networking site is simply not permitted. Solid, documented and enforced processes will keep companies focused on getting the best candidates, not on fighting lawsuits.

EmployeeScreenIQ is a Cleveland, Ohio-based employment screening company offering a variety of employment screening services to mid- and large-cap organizations throughout the world, including those in North and South America, Europe and East Asia. For more information visit www.employeescreen.com.