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Employer Social Media Monitoring Of Potential Employees: What You Find Out May Come Back To Bite You

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We all know that technology enables employers to research potential job candidates, but should an employer do so? This blog examines some potential perils faced by employers who monitor the social media of potential hires.

It is tempting to check out a potential employee's public Facebook page or on-line posts to get a fuller picture of the individual you might hire. However, you may find out information that you, as an employer, do not want to know. And since we leave cyber footprints just about everywhere we digitally travel, a potential employee who discovers you gained a certain knowledge about him or her on-line, may accuse you of failing to hire him or her because of that information. For example, you may find out that the potential job candidate has a disability that you would not otherwise know about or a sexual orientation that you may not guess. If that employee is not hired by you, he or she could use the fact that you found out this otherwise concealed or irrelevant information beforehand to claim you discriminated against him or her on that very basis, violating employment laws.

How about asking an already existing employee, who is a Facebook "friend" of the prospective job candidate, to inform you about, for example, the Facebook pages of that potential employee? This strategy is not a good idea, either. You, as an employer, may still uncover information that you do not want to know, for example, that your job applicant is in a protected category. What is more, you may set yourself up for an invasion of privacy claim because you purposefully instructed your current employee to obtain information that you would not be able to obtain on your own as a Facebook "friend" of the potential hire.

In addition, if your current employee finds out information that is then used by the job candidate to claim discrimination, you have put your current employee in jeopardy of being named as an individual defendant for having "aided and abetted" his or her employer in discriminatory conduct.

So, although you are likely able to find out more about a potential employee by looking at his or her social media accounts, it may not be wise to do so. What you find out may come back to bite you in the form of serious and costly legal action.

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