cupa-hr Webinar

Social Media, Cyberstalking and the Hiring Process

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February 9, 2017

KNOWLEDGE | RESOURCES | ADVOCACY | CONNECTIONS

cupa-hr Webinar

Presenter

Maureen De Armond
Associate Counsel at Iowa State University

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Agenda

Learning Objectives

Don't Do it! Cyber Stalking Job Applicants? NO WAY!

Do It! Google Happens. Ignoring Online Data Is a Mistake

Proceed with Caution: Primary Considerations to Manage Risk and Protect the Integrity of Your Hiring Process

Learning Objectives

Don't Do It: Recognize legal and operational risks to considering online material in assessing job applicants (*e.g.*, protected class status, disparate impact, fairness to applicants and institution)

Do It: Recognize potential benefits (*e.g.*, identify unethical and unprofessional conduct, inconsistent information re job experience, publications)

If You Do It: Understand best practices and proceed with caution:

- Identify the spectrum of options for addressing searching and assessing online material
- Understand the importance of having a solid plan
- Identify the key aspects of such a plan

Don't Do it! Cyber Stalking Job Applicants? NO WAY!

You can find *all kinds* of information about a person on the internet.

This is a free resource, *a potential landmine* of insight…

…all you have to so is Google the name…

Why wouldn't you want to look up an applicant?!??!

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Don't Do it! Cyber Stalking Job Applicants? NO WAY!

What could you learn by googling an applicant?

My BFF's new baby. So cute! Can't wait to have my own!!!

Taste good, but seem to give me an upset stomach ☹

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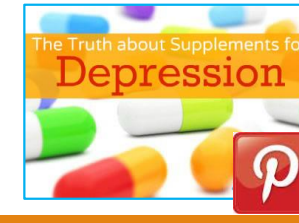
Don't Do it! Cyber Stalking Job Applicants? NO WAY!

Beautiful **new prayer rug just arrived!**

"Check out my new wheels!"

"My so-called friends made me this b-day cake…thanks for rubbing it in!!" #40sucks #gettingold

PROUD VETERAN

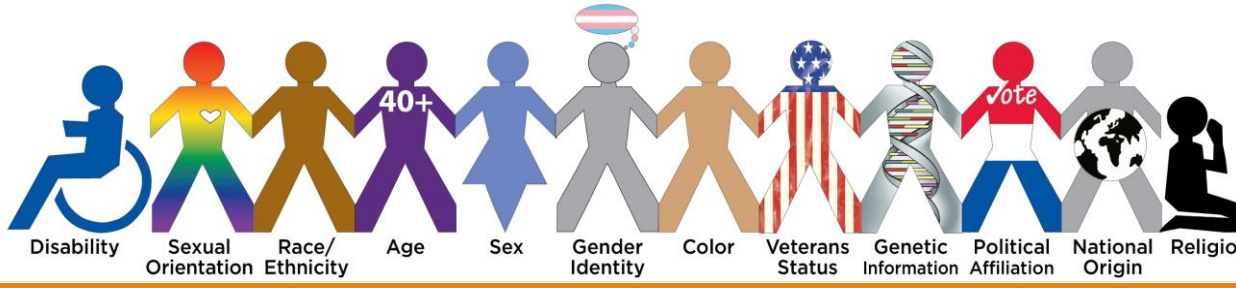


"Prayer Request: Doctor Appt today. Pray the cancer is all GONE!!"

Don't Do it! Cyber Stalking Job Applicants? NO WAY!

So, you learned some "stuff" by cyber-stalking, so what?

Unlawful Discrimination Based on Protected Class Status Applies to the Application & Hiring Process…



Don't Do it! Cyber Stalking Job Applicants? NO WAY!

Bosses May Use Social Media to Discriminate Against Job Seekers

Carnegie Mellon University researchers found evidence that sharing personal information via online social networks can lead to hiring discrimination. Focus on: Muslim v. Christian; Gay v. Straight; Political Affiliation (Nov. 2013)

"While it appears a relatively small portion of U.S. employers regularly searches for candidates online, we found **robust evidence** of discrimination among certain types of employers," Dr. Fong said.

Carnegie Mellon University

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Don't Do it! Cyber Stalking Job Applicants? NO WAY!

"I don't think we were astounded by the fact that there were fewer expressions of interest for people with disabilities, but I don't think we were expecting it to be as large," said Dr. Lisa Schur.

SYRACUSE

RUTGERS

Rutgers & Syracuse Study: Employers Discriminate Against Qualified Workers with Disabilities

Employers are more likely to discriminate against highly qualified job applicants who have disabilities than equally qualified candidates who do not.

Employers expressed interest 26% less often in candidates who disclosed disabilities in cover letters.(Nov. 2015)

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Don't Do it! Cyber Stalking Job Applicants? NO WAY!

Should the absence of online content count against the candidate?

Potential Disparate Impact

-27% of adults living with disabilities are significantly less likely to go online (54% v. 81%)

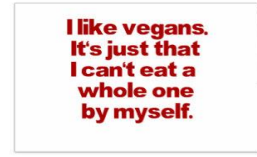
-Latinos less likely to be on LinkedIn (29% v. 18%)

(Pew Internet Project)

Don't Do it! Cyber Stalking Job Applicants? NO WAY!

Q: What else can you learn if you google applicants?

A: Potentially, a whole lotta stuff!



Don't Do it! Cyber Stalking Job Applicants? NO WAY!

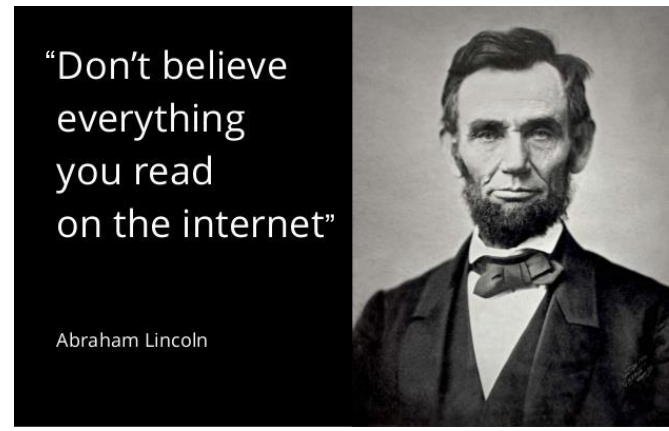
Other considerations:

You got the wrong guy!

Info is inaccurate, misleading, taken out of context

Info is dated….

Info does not really help…



Do It! Google Happens. Ignoring Online Data Is a Mistake

Do It! Google Happens. Ignoring Online Data Is a Mistake

- Comments not reflecting your values: racist, sexist, homophobic
- Evident links to criminal behavior
- Evidence of poor work ethic, disclosing confidential info (FERPA)
- Bad judgment … maybe even really, really bad judgment
- Bad-mouthing current/former employers/co-workers
- Inconsistent information re job history, education, degrees, publications
- Ulterior motives
- Demonstrating really poor communication skills
- Lying about: qualifications, absences, experience

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Do It! Google Happens. Ignoring Online Data Is a Mistake

In January 2010, a sociology professor at East Stroudsburg University in Pennsylvania, wrote on Facebook: **"Does anyone know where I can find a very discrete hitman? Yes, it's been that kind of day…"**

In February, she wrote: **"had a good day today. DIDN'T want to kill even one student. :-). Now Friday was a different story."** A student then reported her comments to university officials. She was suspended.

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Proceed with Caution: Primary Considerations to Manage Risk and Protect the Integrity of Your Hiring Process

Google Happens! Without discussion, a plan, guidance, or rules ***rogue*** Google searches of applicants ***will happen***.

Proceed with Caution: Primary Considerations to Manage Risk and Protect the Integrity of Your Hiring Process

CASE STUDY: Steven Salaita vs. the Univ. of Illinois

Proceed with Caution: Primary Considerations to Manage Risk and Protect the Integrity of Your Hiring Process

EEOC Guidance:

- Avoid pre and post-hire discrimination
- Avoid workplace harassment
- Hire 3rd party or designate reviewer
- Don't ask for passwords!
- Monitor state law

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Proceed with Caution: Primary Considerations to Manage Risk and Protect the Integrity of Your Hiring Process

Wild West	Complete Ban	Everyone	Select Positions
Con: No Policy or Guidance	Pro: Policy Clear	Pro: Guidance or Policy Clear	Pro: Guidance or Policy (Clear?)
Con: No Consistency	Pro: Appearance of Consistency	Pro: Consistent Standard	Pro: Consistent Standard
Con: Greatest Legal Risks	Con: Underground Searches; Legal Risks	Con: Not efficient	Con: Clarity of Applicability
Con: Greatest Risk for Unfairness	Con: Risk for Unfairness	Con: Overly intrusive	In-House or Vendor?
	Con: Will Miss "Stuff"	In-House or Vendor?	

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Proceed with Caution: Primary Considerations to Manage Risk and Protect the Integrity of Your Hiring Process

If you are going to allow for online searches, you need a clear (and defensible) process.

Manage pro's and con's

Proceed with Caution: Primary Considerations to Manage Risk and Protect the Integrity of Your Hiring Process

Key Process Components:

- Transparency
- Policy; Training
- Consistency (How)
- Consistency (Who)
- Rationale for Search (Why)
- Timing (When)
- Impact of Findings (What)
- Monitor State Law
- Don't Ask for Passwords!

Proceed with Caution: Primary Considerations to Manage Risk and Protect the Integrity of Your Hiring Process

Transparency Matters: Your process should be clear for applicants (as it is with criminal, credit background checks) *and* all employees involved in the hiring process.

No secrets. No Surprises.

Proceed with Caution: Primary Considerations to Manage Risk and Protect the Integrity of Your Hiring Process

Policy; Training: Process should be reduced to writing and easy to find. Train those involved in the hiring process.

Is everyone required to comply with University policy?
Are there consequences for those who do not?

Proceed with Caution: Primary Considerations to Manage Risk and Protect the Integrity of Your Hiring Process

IOWA STATE UNIVERSITY

SEARCH COMMITTEE CHARGE & CONFIDENTIALITY STATEMENT

As a search committee member at Iowa State University (the university), I understand the ultimate success of our search process and the integrity of the university depend on searches being conducted in an impartial, ethical, and professional manner. I acknowledge that I understand and agree to abide by the following throughout, and after, my participation with this search.

Committee Charge

By signing below, I agree:
I will fully participate in committee activities, including being on time and prepared for all meetings;
I will review with diligence all applicants' vita resumes provided to me; and
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Search Committee Member's Signature — Today's Date

Search Committee Chair Department — Search Date

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Proceed with Caution: Primary Considerations to Manage Risk and Protect the Integrity of Your Hiring Process

How to Manage Scope and Consistency of Searches

Where to search?

What sites do you review?

How exhaustively do you search?

Do you conduct identical searches for each candidate?

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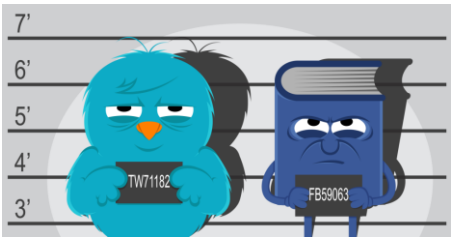
Proceed with Caution: Primary Considerations to Manage Risk and Protect the Integrity of Your Hiring Process



Who do you think would be the most and least appropriate people to (a) conduct the searches and (b) review the data collected:

1. Members of the search committee
2. Future supervisor
3. Future supervisor's supervisor
4. Future co-workers
5. Administrative assistant in area the where candidate would work
6. Human Resources
7. Third party vendor

Proceed with Caution: Primary Considerations to Manage Risk and Protect the Integrity of Your Hiring Process

Rationale for Search: <u>If</u> you are going to search online, you need to articulate a good reason (curiosity is ***<u>not</u>*** a good reason).

"It's curiosity."

Proceed with Caution: Primary Considerations to Manage Risk and Protect the Integrity of Your Hiring Process

Could you articulate a good reason to conduct an online search for any of the following:

Lab Technician
Chief Diversity Officer
Third Shift Custodian
Adjunct Math Professor
Director of Marketing
Assist Prof Kinesiology
Cook in Student Dining
Assistant Football Coach
Academic Advisor
Facilities/Maintenance
Resident Hall Director
Director of Equal Opp.
Dean of Students
Creative Writing Postdoc
President's Administrative Assistant
Vice President of the University Foundation

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Proceed with Caution: Primary Considerations to Manage Risk and Protect the Integrity of Your Hiring Process

When to discuss topic? When do you decide to search or not to search? Halfway through? When do you tell the candidate? Or is it part of the application process (certification)

When to conduct search: When do you conduct the search…
..before or after you meet the candidate ***in person***?
Why is timing important?

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Proceed with Caution: Primary Considerations to Manage Risk and Protect the Integrity of Your Hiring Process

Impact of findings: What do you do with the results?

How to assess the information gathered:

- Information should not add to a candidate's overall "score"
- No internet presence should not count against a candidate
- Impact on overall assessment should be minimal

***Practice Tip**: Use info only to screen out. Want to know more about the candidate? Call more references! Longer interviews!*

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Take-Aways

- The internet is here to stay…*and it can lie, deceive, and distort*
- Unlawful discrimination occurring during the hiring process is a risk
- At the same time, data available online about candidates may be helpful
- Each institution should weigh the pro's and con's and make a (*conscious*) decision on how it wants to deal with the reality of online data.
- There should be a clear process or ban on conducting online searches of job applicants. People should not be guessing or "going rogue"
- Discussing the topic up front with search committees can head off problems (and surprises) later in the process *(re Univ of IL).*
- Human Resources (and Legal) should be prepared to pro-actively help and re-actively triage

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Take-Aways: Reading Materials

BONUS

Social Media, Cyber Stalking, and the Hiring Process
Do's, Don'ts, and You-Did-Whats!??

Presented by: Maureen De Armond, JD
Associate Counsel at Iowa State University
CUPA-HR Annual Conference
September 26, 2016

"Required Reading"

Legal and Ethical Considerations for Social Media Hiring Practices in the Workplace (The Hilltop Review)

Re EEOC Guidance

Social Media Is Part of Today's Workplace but its Use May Raise Employment Discrimination Concerns

Meeting of March 12, 2014 - Social Media in the Workplace: Examining Implications for Equal Employment Opportunity Law

The EEOC Hears Concerns About Social Media and Hiring (New York Law Journal)

Online Articles/Guidance

Top Ten Considerations When Using Social Media in the Hiring Process (Association of Corporate Counsel)

POINT/COUNTERPOINT Should Employers Use Social Media to Screen Job Applicants? (SHRM)

Using social media to disqualify job candidates is risky (Chic. Trib)

Job Applicant Screening: Is Social Media Fair Game? (Bloomberg BNA)

Social Media and Employment Law—Are Courts Catching Up? (Wolters Kluwer)

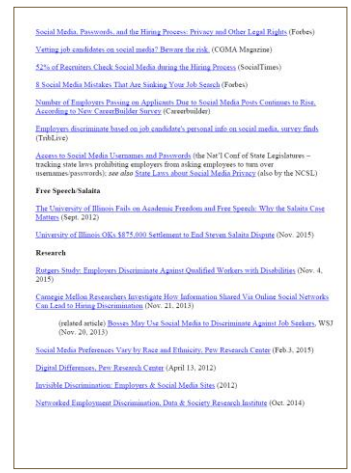
Social Media Use in Hiring: Assessing the Risks (SHRM)

Watch out for pitfalls, risks of using social media in hiring (HR Specialist)

Social Media Recruiting: Understand the Legal Guidelines (Monster.com)

Hiring Practices and Social Media (Legalzoom)

Facebook Snooping on Job Candidates May Backfire for Employers (Scientific American)



Social Media, Passwords, and the Hiring Process: Privacy and Other Legal Rights (Forbes)

Vetting job candidates on social media? Beware the risk. (COMA Magazine)

52% of Recruiters Check Social Media during the Hiring Process (SocialTimes)

8 Social Media Mistakes That Are Sinking Your Job Search (Forbes)

Number of Employers Passing on Applicants Due to Social Media Posts Continues to Rise, According to New CareerBuilder Survey (Careerbuilder)

Employers discriminate based on job candidate's personal info on social media, survey finds (TribLive)

Access to Social Media Usernames and Passwords (the Nat'l Conf of State Legislatures – tracking state laws prohibiting employers from asking employees to turn over usernames/passwords); *see also* State Laws about Social Media Privacy (also by the NCSL)

Free Speech/Salaita

The University of Illinois Fails on Academic Freedom and Free Speech: Why the Salaita Case Matters (Sept. 2012)

University of Illinois OKs $875,000 Settlement to End Steven Salaita Dispute (Nov. 2015)

Research

Rutgers Study: Employers Discriminate Against Qualified Workers with Disabilities (Nov. 4, 2015)

Carnegie Mellon Researchers Investigate How Information Shared Via Online Social Networks Can Lead to Hiring Discrimination (Nov. 21, 2013)

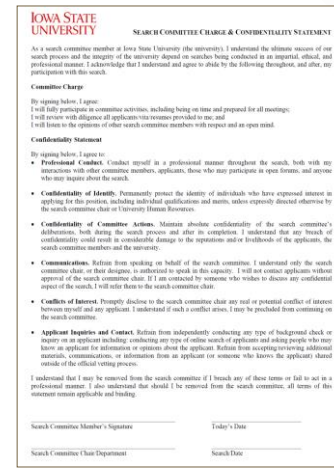
(related article) Bosses May Use Social Media to Discriminate Against Job Seekers, WSJ (Nov. 20, 2013)

Social Media Preferences Vary by Race and Ethnicity, Pew Research Center (Feb.3, 2015)

Digital Differences, Pew Research Center (April 13, 2012)

Invisible Discrimination: Employers & Social Media Sites (2012)

Networked Employment Discrimination, Data & Society Research Institute (Oct. 2014)



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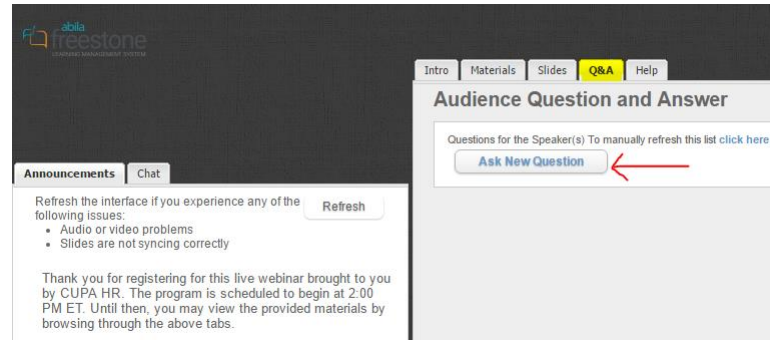
cupa-hr™ Webinar

Q & A

Don't forget to submit your questions to our presenters.

How? Click on the Q & A tab at the top of the presentation and select *Ask New Question*.

Thank you for joining us today!



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Thank You!

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