



Using Facebook to Assess Candidates During the Recruiting Process: Ethical Implications

By Beth E.H. Lory

Online social networking web sites (SNWs) have risen in popularity over the last several years, especially among traditional college-aged students (18 to 22 years of age). Facebook, one of the most popular, lets people connect with family and friends, share comments and information, upload photos and videos, and join and form groups. It has been reported that SNWs are the most visited web sites after the major search engines.¹

As Facebook's popularity has increased, so too has the number of employers using Facebook to assess job candidates. The volume of resumes typically received for open positions and the ability to learn a lot easily about a candidate are among the reasons why employers use Facebook to vet applicants. Employers also contend that they are acting in the best interest of their organization.²

According to an article on Ethica Publishing's web site, "When an employer uses Facebook as a means for employment screening, they are practicing the utilitarian approach of ethics [which states that] 'the ethical corporate action is the one that produces the greatest good and does the least harm for all who are affected—customers, employees, shareholders, the community and the environment.' ... Employers do not care if they invade your privacy during their hiring search as long as it is serving the 'greater good' by hiring superior employees."³

Employers may contend that the Internet is a public forum and a SNW user chooses to use it, but employer use of Facebook to screen applicants can have legal and ethical implications.

While the decision to post videos, pictures, thoughts, experiences, and observations to social networking sites is personal, a single act can create far-reaching ethical consequences for individuals as well as organizations.

Therefore it is important for executives to be mindful of the implications and to elevate the discussion about the risks associated with it to the highest levels of leadership.

Sharon L. Allen
Chairman of the Board, Deloitte LLP
2009 Ethics and Workplace Survey

Because the law often lags behind issues surrounding technology and other social trends, using Facebook to screen applicants is currently unregulated. Also, many organizations do not have policies on employee use of SNWs. According to the 2009 Ethics and Workplace Survey conducted by Deloitte LLP among 500 business executives, 58 percent of respondents said that reputational risks and social networking should be a boardroom issue, but only 15 percent said that it actually is.

Surveys Verify Employers Use Facebook

According to one survey, "More than a third of respondents said that they found info that caused them not to hire the person applying for

the job, including 'provocative or inappropriate photographs,' content related to drinking or using drugs, and findings that badmouthed previous employees, coworkers, or clients. Other candidates...lied about their qualifications, or shared confidential information from a previous employer."⁴

On the flip side, many students say it is unethical for employers to view their Facebook profiles. A survey of nearly 2,000 students from the University of Dayton, Antioch College, Sinclair Community College, and Wittenberg University revealed that "many students tended to draw sharp lines between their personal lives and their professional faces."

Facebook "is a strictly personal matter, and many users admitted to misrepresenting themselves—or to 'joining groups that do not accurately depict who I am or want to be'—for sake of humor or social gain."⁵

Furthermore, "Forty-two percent of students...felt it was a violation of privacy to consider Facebook profiles as part of the hiring process."⁶ Also, results from the National Association of Colleges and Employer's (NACE) 2010 Student Survey indicate that "less than one-third of responding seniors think employers should be looking at their profiles," according to an analysis in NACE's Spotlight Online newsletter.

Regardless of how students feel about the issue, they need to prepare for it. Microsoft's Chief Privacy Specialist Peter Cullensays, "Online reputation is not something to be scared of; it's something

to be proactively managed.” He urges anyone using these tools to cultivate “the online reputation that you would want an employer” to see. In an ideal world, of course, your personal life would be impermeably separated from your professional existence. As we all know...that’s just not the case anymore.”⁷

The Rise of Facebook

Created in 2004 by former Harvard undergraduate student Mark Zuckerberg, Facebook was only available to select college students. In 2006, Facebook became available to everyone. User content is managed through security settings. In 2009 Facebook made all users’ information publicly available. Certain information on a user’s profile is set to the default status of “Everyone.” This includes the user’s name, picture, gender, current city, networks, and friend list.

Anyone using Facebook can see this information, but it can be hidden by changing the privacy settings.

One Employer’s View

Donald Heeman, an attorney with Felhaber Larson Fenlon & Vogt, regards Facebook as open season when it comes to employers viewing job applicants.

“I can never imagine a time or good reason for anyone to be on Facebook,” says Heeman.

While he recognizes people may use Facebook as “an outlet to decompress, you can get stung by what you put out there.” He warns students that what they post could reflect poor judgment and have career limiting effects, and says users need to “own their public persona.” If you publish something yourself, you “do not have a right to

privacy. If someone else publishes something unfavorable about you, you may have certain rights, but you must do what you can to have that information removed,” Heeman cautions.

Legal Pitfalls

Although no laws currently govern Facebook, employers using it to screen candidates run the risk of violating other laws, including federal Fair Credit Reporting Act (FCRA) and discrimination laws.

“The FCRA requires employers to notify job applicants and obtain their consent before conducting a background check,” Rita Zeidner said in an article in *HR Magazine*.⁸

Les Rosen, a former California deputy district attorney, says under the FCRA, online searches should be performed only after the candidate has been offered a job and only with that person’s permission.

According to Zeidner, “Employers... increase their exposure to discrimination claims when they gather too much information about a candidate. Companies suspected of rejecting a candidate based on race, religion, or marital status can find themselves being hit with a claim of hiring based on unlawful factors.”⁹

Employers could also make judgments about a candidate based on too little or false information. The Employment Practices Data Protection Code states that an employer should “not place reliance on information collected from possible unreliable sources.” And, employers should “only use [preemployment] vetting as a means of obtaining specific information, not as a means of general intelligence gathering.”¹⁰

Higher Education Professionals’ Perspective

Vic Massaglia, career counselor at the University of Minnesota (UM) law school, calls Facebook the “wild, wild west” because no rules, policies, or laws currently exist about its appropriate use.

In interviews with career professionals at UM, St. Catherine University, and Capella University, about half felt it was inappropriate and sometimes unethical for employers to use Facebook to screen applicants. Several mentioned that it is a violation of fairness because professional and personal boundaries get blurred, and applicants can not be equally assessed if they do not all have Facebook accounts.

Many career counselors feel that practices such as someone hacking into a user’s Facebook account or asking someone to search someone else’s profile is inappropriate and unethical. The counselors say that employers put themselves in a vulnerable position and face possible discrimination charges by accessing protected information during the recruiting process.

Darren Kaltved, associate director, Career Center for Science and Engineering (CCSE) at UM, says if a student’s profile is public, “ethically there is nothing wrong” with employers searching on Facebook, “as long as you’re treating all candidates equally.”

CCSE and the other career centers on the UM campus intentionally educate students about Facebook’s potential dark side.

“All photos and content are part of a student’s image and are open and fair game for employers,” says Kaltved. He says a big issue now is “who owns the information published on Facebook?”

Massaglia agrees. He says what he posts on Facebook is content that he owns, and not for Facebook or anyone else to misuse in any way. He says employers have asked for access to students’ Facebook accounts, and he advises students to direct employers to their LinkedIn accounts.



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“What are my rights as a citizen of the United States if I don’t provide [my Facebook] information? What makes me think you won’t discriminate against me? This request makes employers legally vulnerable,” Massaglia maintains.

Massaglia tells students “to do their due diligence because employers are using Facebook to screen.” He encourages students to think about their purpose and their online “brand” and to ask themselves, “How do I want to be perceived?”

Jennifer Shofner, assistant director of business development at the Graduate Business Career Center (GBCC), Carlson School of Management (CSOM), UM, says employer use of Facebook in the recruiting process is a gray area.

“There has to be a boundary between work and personal,” Shofner says. “You can play hard at work and in your personal life. If you’re doing your job, your personal life shouldn’t matter. It’s fine for employers to use Facebook to look for red flags, but who am I to judge what I learn?”

While Shofner doesn’t feel it is right for employers to use Facebook as a screening tool, she says it is fair game if a student makes him- or herself available on the site. CSOM teaches students about Facebook privacy settings. “Students need to create the Facebook profile they want to present, and manage their personal brand,” she says.

Shofner is aware of one employer who asks candidates to “friend” them on Facebook before continuing to second round interviews. The employer said they want to know the person’s character. Shofner believes that employers can learn a lot about candidates through recruiting events that are designed to be social—where students can shine—or not. Regardless, she feels that all employers should develop a Facebook policy. She said UM does not have a campus-wide policy and has no plans to develop one, so the GBCC has created one for staff.

Heidi Perman, assistant director, St. Paul Campus Career Center, UM, echoes Shofner’s sentiments.

“As someone who hires, I don’t look at Facebook accounts,” Perman says. “People have social lives that are separate from their work lives. It’s easy to paint an entire picture without context and make inaccurate assumptions based on limited information. Just because I have access to the information does not make it right for me to get it. The possibility exists for discrimination and personal bias.”

Perman understands why employers are using Facebook, especially if they have been burned in the past by employees. But she feels the practice is a slippery slope, and employers could be setting themselves up for potential litigation. She also disapproves of the practice because no clear policy exists by which all candidates are being assessed equally or consistently. Her office counsels students to think about how they want to brand themselves and what they will do if an employer asks for access to their account.

Kimberly Betz, director of career development for St. Catherine University, also disapproves of employer use of Facebook. She thinks that such use can make it difficult for employers to make objective decisions.

“The reality is, employers are doing it, and it’s our job to make students aware and to educate them,” says Betz. “We talk to students about their ‘Googleability.’ We ask students, how can you use Facebook to your advantage?”

Betz tells students that people are going to find out what they can, and may make decisions based on what they see.

Regarding ethics, she says, “Is it unethical for an employer to look at it and make a decision based on what they see? Are their decisions unfair? Discriminatory? It is the burden of the employer to make decisions in a responsible way.”

Melody Jennings Kruzic, a career counselor at Capella University, thinks more employers are using Facebook to assess candidates than surveys have

revealed. “There is nothing to prevent it,” she says. Kruzic also says some of the onus is on candidates to change privacy settings and to post appropriate information. “Until the laws and HR catch up, no one is telling employers that they can’t [access Facebook],” she says.

Facebook’s Policies

Any discussion of Facebook as a part of the screening process must also include Facebook’s privacy policy, principles, and rights and responsibilities statements.

Questions about privacy and Facebook users’ rights to it have been raised. According to an article in the *Federal Communications Law Journal*, there is “no clear answer can yet be gleaned from legal precedent as to whether Facebook users...have a reasonable expectation of privacy in their profiles and posted materials.”¹¹

Facebook’s privacy policy states: “You decide how much information you feel comfortable sharing on Facebook and you control how it is distributed through your privacy settings.” The policy also warns, “We cannot control the actions of other users with whom you share your information. We cannot guarantee that only authorized persons will view your information. We cannot ensure that information you share on Facebook will not become publicly available. If users set up appropriate privacy settings, employer surfing is less worrisome.”¹² But by employers using Facebook to screen an applicant without the person knowing, are employers violating this principle?

Employers that use Facebook to screen applicants could be violating a number of criteria outlined by the site’s rights and responsibilities statement.

Examples include, “You will not solicit login information or access an account belonging to someone else.” (Employers ask applicants for access to their Facebook profiles.) “You will not bully, intimidate or harass any user.” (An employer that asks applicants to provide access to their Facebook account could

be in violation.) “You will not use Facebook to do anything unlawful... discriminatory.” (Employers’ access to a user’s photo, gender, age, race, and religious affiliation could have discriminatory implications.) “You will not... let anyone else access your account, or do anything that might jeopardize the security of your account.”¹³ (Employers may be putting an applicant in an unfair and unethical position by requesting access to his or her account.)

NACE: Principles for Employment Professionals

NACE has not established specific language for career services professionals and employers about the use of Facebook in employment screening. However, considering what the *Principles* currently state, these NACE principles could be violated through this practice:

6. Employment professionals will maintain equal employment opportunity (EEO) compliance and follow affirmative action principles in recruiting activities in a manner that includes the following:
 - a) Recruiting, interviewing, and hiring individuals without regard to race, color, national origin, religion, age, gender, sexual orientation, veteran status, or disability, and providing reasonable accommodations upon request....
 - c) Avoiding questions that are considered unacceptable by EEO guidelines for fair employment practices during the recruiting process.

Conclusion

Employers may claim that it is fair to use Facebook to screen applicants, but they should be careful. Some believe that in the future the legal system will say the employer must show that such use of Facebook did not enter into its hiring decisions. Until then, colleges should advise students that their online postings might legally be examined by employers. Employers may want to consider any impact on their public

relations image by using Facebook to assess candidates.

Career professionals should continue to educate students about appropriate privacy settings, creating a favorable online presence, and using Facebook to network. Fairness has also been raised, yet fairness can be interpreted in varying degrees, depending on who is defining it. However, if an applicant will be working in a public capacity, he or she must realize that as a representative of

the organization, his or her background, including information on Facebook, can be subject to scrutiny.

Facebook users, such as traditional college-aged students, will apply for internships and volunteer or full-time positions during their college years. They, too, are advised to use Facebook wisely. Students need to understand that what they present online could be judged by others and could affect their ability to land employment opportunities. 

NOTE: The legal waters regarding this subject are still cloudy. NACE does not provide specific legal advice, therefore it is strongly recommended that colleges and employers consult their legal counsel on how to proceed regarding the use of social networking sites.

Endnotes

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