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SMALL BUSINESS SERVICES

## Using Social Media in Hiring: Considerations and Precautions



The growing popularity of social media has some employers exploring the possibility of using social media to recruit and even screen job candidates. However, it is important for employers to exercise caution in this area to avoid violating laws pertaining to non-discrimination, background checks, and privacy. In this Tip, you will read some considerations and precautions related to the use of social media in hiring.

### Using Social Media in Hiring: Considerations and Precautions

The growing popularity of social media has more and more employers contemplating the use of social media to recruit and screen job candidates. However, employers should be aware of the hidden hazards that can accompany this practice. In this Tip, you will read about some considerations and precautions regarding the use of social media when hiring.

#### Considerations:

##### Understand protections for applicants and employees.

When using social media in hiring, employers must consider federal and state laws addressing discrimination, background checks, and privacy. For instance, some states protect workers from discrimination based on legal off-duty conduct, such as smoking or the consumption of alcohol, which may be revealed on social media sites. Other protected characteristics, such as race, age, religion, and disability, may be revealed on social media as well. Employers must avoid making employment decisions on the basis of protected characteristics and activities.

**Assess alternatives.** There may be more suitable options for employers to recruit and screen candidates rather than using social media. For example, if the intent of using social media is to investigate an employee's qualifications, then a formal employment and education verification may produce more accurate results and include only information that is strictly job-related.

#### Precautions:

**Don't request passwords to personal social media accounts.** A growing number of states (including Arkansas, California, Colorado, Illinois, Maryland, Michigan, Nevada, New Mexico, Oregon, Utah, Vermont,

and Washington) have enacted legislation prohibiting employers from requiring applicants and/or employees to provide the employer with access to their personal social media accounts. Even in states that don't explicitly prohibit this activity, it is not a best practice for employers to request or require an applicant to provide login credentials or otherwise provide access to personal social media accounts.

##### Don't take the information at face value.

While some of the information you discover about a candidate may seem to be worthwhile, such as the college or university in which he or she obtained their degree or the professional organizations to which he or she belongs, it's important to realize that this information may not be accurate. Applicants--and even other parties posing as the applicant--may post erroneous information online. As such, it's important to investigate further and to never make an employment decision based solely on information that was obtained online.

Designate a “search person” who is not the decision-maker. Employers who decide they want to perform social media searches should designate a person who is not the ultimate decision maker to conduct the searches. This person should be provided with specific job-related criteria for which to be looking and should be trained to conduct the searches on a consistent basis. For example, it is a good idea to perform the searches at the same point in the hiring process every time, conduct searches on all candidates who made it to that point in the hiring process, and use the same search sites every time for every candidate. Designated search persons should be instructed not to reveal protected activities or characteristics that they uncover through social media searches.

**Document factors used to make employment decisions.** As with every employment decision, an employer should be able to articulate a legitimate job-related basis for making the hiring decision. It is a best practice for employers to retain documentation that supports the non-discriminatory basis for each hiring decision.

**Have a social media hiring policy in place.** For employers who regularly use social media as a recruiting and/or screening tool, it is a best practice to implement a policy explicitly prohibiting its use to discriminate against applicants. The policy should address employees charged with recruitment and social media search duties, and may reflect that, while the employer may access social media websites when searching for potential candidates, it will not use any information obtained on those sites to discriminate against potential candidates based on protected characteristics or activities.

While social media may provide an added means for recruiting and screening applicants, employers should balance recruiting goals with the obligation to provide a workplace free of discrimination.



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