

# Should Facebook and Google Be in Your HR Toolkit?

## Successfully manage your workforce with these rules

by Kathryn M. Vanden Berk

**Unemployment has reached an historic high, creating an abundance of qualified candidates to fill open positions. With the Internet at their fingertips, nonprofit human service employers may find it an alluring option for narrowing the field of candidates—or checking up on current employees. What they find can be affirming, or it can throw the organization into a panic.**

**Employers must understand how to properly and effectively use the Internet for human resources (HR) purposes, but also the limitations of the Internet as a workforce management tool.**

**Of the following, related scenarios, two actually came from my own practice. The remaining are reported in some of the many articles that are either blessing or decrying the use of the Internet as an HR tool.**

**Scenario 1:** You have two job candidates who have equal backgrounds and experience, and you don't know how to break the tie. You "Google" their names and come up with a racy and explicit photo that of one of them has posted on his Facebook profile.

**Scenario 2:** You use Facebook to look up an applicant for a position in the finance department. You discover she has posted comments that insinuate poor financial management on the part of her current employer. "You wouldn't believe how they make decisions here,"



she writes. "They tell you that there isn't any money, but believe me, when Dana Brewer (the CFO) wants something, there's always money for her!"

**Scenario 3:** A staff member has been too friendly with youth who attend your after-school program. You place him on suspension after you overhear him using street language with a young man. The next day, you find a comment on his Facebook page, on which he says, "I happen to know that one of those kids has access to a stolen gun, and he's offering to kill people. Maybe he should start with the administration!"

**Scenario 4:** Three weeks ago, a staff member called in sick and told you she would be out for three days. Yesterday you found that she posted photos of her and her boyfriend in New York's Times Square on one of the days she was absent.

As each of these scenarios demonstrate, the Internet can help employers discover information that is detrimental to an employee or job applicant, but critical to effectively managing their organization. They might find that an applicant's resume dates don't line up with information discovered online, or that their postings on Facebook directly contradict what is being claimed in the job interview.

However, the Internet can also help employers discover positive information, such as employee and potential employee involvement in the community, sports, and recreational activities. Employers might find out that the person is networking in all of the right places, or that he or she has exceptional communication skills.

The following are some considerations for using the Internet as a tool in your HR department.

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**If you use the Internet to seek information about one job candidate, be sure to use it consistently for all job candidates. It will then become just one more source of information, among others, for judging a candidate, and you cannot be charged with discrimination.**

### Legal Concerns

**Privacy.** It is unlikely that job applicants or employees can claim invasion of privacy if the information accessed is information they are responsible for putting out on the Internet.

Postings on Facebook and MySpace are public postings. However, if you use an illegally obtained password to access an employee's chatroom, you may be liable for invasion of privacy.<sup>1</sup>

On the other hand, Internet searches may turn up something about the person that employers should not know, such as information about sexual orientation, religious identity, national origin, arrest records, or disability. These are issues that employers are not allowed to ask a person point-blank, and coming upon it through Internet research may put them in an uncomfortable position.

**Laws Regulating Off-Duty Conduct.** Some states have enacted laws that prohibit discrimination based on lawful, off-duty activities.<sup>2</sup> Others may have laws that require employers to disclose adverse information they find in "public records" in connection with an employment application.<sup>3</sup>

**Credibility Considerations.** Much information on the Internet is unreliable. Internet searches may turn up information from another person with the same name, or defamatory information that was deliberately posted by a falsifier. If an adverse employment action is based on untrue information, the organization may lose a potentially good employee for no good reason.

**Relevancy.** Sometimes employers will find information that is plain embarrassing; the Internet hangs on to posted information or photographs long after the foolish young person impulsively posted them.

If an employer finds out something that is irrelevant to a person's ability to

complete the essential functions of a job, they need to ignore it. On the other hand, if what is found is so egregious that it undermines the person's integrity, employers need to be able to address the issue before discarding it as irrelevant.

### Background Checks

No law actually prohibits organizations from using the Internet or social networking sites to conduct background checks of current employees or job applicants.

If you do decide to use the Internet as a tool, use caution and remember:

- Use the Internet to confirm resume claims of educational achievements and work-related activities.
- Be sure you are not getting information that you should not have or, if you have discovered something you should not know, don't save it.
- Never use information in a discriminatory manner or as otherwise prohibited by law.
- If you use the Internet to seek information about one job candidate, be sure to use it consistently for all job candidates. It will then become just one more source of information, among others, for judging a candidate, and you cannot be charged with discrimination.
- If you use the Internet to seek information about existing employees, be sure to give them the benefit of the doubt. Don't unreasonably impose on their legitimate rights of free expression.
- Be sure that if you take action, it is not for a petty matter.
- Take the information with a grain of salt. Don't give it more weight than it is worth.

If you adhere to these rules, you should find that the Internet is a valuable tool, one that will help you successfully manage your workforce. ■

### DISCLAIMER

This article has been prepared to convey general information about a topic of interest to the boards and executive staff of nonprofit human service organizations. Although prepared by an attorney, it should not be used as a substitute for legal counseling in specific situations. Readers should not act upon the information contained in this article without professional guidance.

### ENDNOTES:

1. See *Pietrylo v. Hillstone Restaurant Group*, 2008 U.S. LEXIS 108834 (N.J. 2008) where compensatory and punitive damages were awarded.
2. For example, Colorado statutes prohibit termination of an employee based on any legal, off-duty conduct unless the conduct is related to a bona fide occupational requirement. Also, New York prohibits employers from terminating employees based on off-duty political activity.
3. The Fair Credit Reporting Act requires prospective employers to obtain written disclosure that they will be seeking a credit report, as well as disclose the report if an adverse action will be based on it. See 15 U.S.C. Sec. 1681 et seq.



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