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Digital Age hiring process filled with danger

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In these tough economic times, when one-third of states are experiencing double-digit unemployment and competition for scarce jobs is heightened, a

word to the wise for job hunters and those employees seeking to change jobs: Think twice before you post information and pictures on the Internet.

The days are long gone when a print advertisement served as the single platform of announcing a job opening and candidates could shield their identities and inner self until the face-to-face interview day arrived.

For employers: Be prepared for potential lawsuits if you made a hiring decision based on what you found online.

Today, the hiring process can be much different – a dangerous – for both the employers and candidates. Mintel International Group Ltd., reports that nearly all Fortune 500 companies use online recruiting as their primary source for hiring. This means that just as candidates are going online to search for jobs, employers are tempted to screen candidates by searching social-media sites to learn about applicants' lifestyles and just about everything else that might be found on Facebook, LinkedIn, MySpace, Twitter and blog postings.

Remember that picture of you at the party on the business end of a beer-filled funnel? Or how about that shirtless picture of you at a Patriots game? Harmless at the time, perhaps. But now that those photos may be publicly viewable for your future boss to see, not so harmless.

Interestingly, very few people post pictures of themselves volunteering, feeding the hungry or doing good deeds. It seems that pictures showing the poorest judgment tend to make their way onto Facebook and MySpace. Go figure.

With the explosion of social-networking sites such as Facebook, LinkedIn, MySpace and Twitter, there is a treasure trove of information available to employers when screening candidates. Whether we like it or not, employers have the legitimate right to consider most, but not all, of what they can publicly see about an applicant in making their hiring decisions. But if they go down that road, there are risks.

While employers may consider an applicant's poor judgment or character during the hiring process, pictures and postings may also reveal an applicant's protected status (such as race, gender, age or sexual orientation). Remember, pictures are worth a million words in the Digital Age.

The irony here is that employers may unwittingly or passively stumble onto information that would subject

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them to civil liability if they had asked candidates directly about their race, disabilities or sexual orientation, for example. The mere act of googling for information about a candidate carries the risk of obtaining knowledge that might not otherwise have surfaced. If an employer does not hire the candidate, the burden will be on the employer to explain that the discovery was not “used” in the employer’s decision.

There is another problem with using social-media sites to screen applicants: If an employer only considers candidates who have social-media accounts on Facebook or LinkedIn, for example, employers may face liability under so-called “disparate impact” or “disparate treatment” theories.

The race, age, gender and education levels of the general working population are distinctly different from those who are Facebook, LinkedIn and other social-networking users. By focusing solely or heavily on hiring only candidates with a Facebook or LinkedIn account, for example, employers might unwittingly exclude members of a protected class from consideration, possibly resulting in discrimination litigation or claims by the Equal Employment Opportunity Commission.

So, what should employers do? At a minimum, employers should have a written policy about what social media, if any, the employer will consult during the hiring process – and then follow that process. For example, the safest (but perhaps not practical) route might be to avoid using online searching during the screening process. Another alternative would be to ensure that the decision-makers in the hiring process did not conduct any online searching themselves, but instead considered information that other employees provided to them (without protected information).

There are ways to use social media in the hiring process; employers just need to be careful and thoughtful before doing so.

And for all those job-seekers: Think carefully before you have that bachelor (or bachelorette) party picture taken in the first place; and think twice before posting it online or sharing it electronically with your “friends.” In the Digital Age, Shakespeare might have said: “All the world’s a stage online; and we are all merely players.” •

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