

Prospective Employees Inadvertently Open Their Kimonos to Employers On Social Networking Sites



By Eric Sinrod,

George Orwell, in his book 1984, envisioned a world in which Big Brother, the omnipresent government, watched our every move. In Orwell's world, notions of privacy were all but gone.

Fast forward: now we are in the later year of 2008. And while privacy as we once knew it may be vanishing, that is not necessarily only happening at the hands of government. Indeed, access to very personal information now is at the fingertips of private employers.

This article explores how the content and conduct of potential employees can come back to haunt them when they ultimately apply for specific jobs. Along the way, this article touches on possible legal restrictions that might preclude employers from using information gained from social networking sites to the disadvantage of people they are considering for hire.

While social networking sites were practically unheard of not too long ago, their popularity and use are growing exponentially on a recent year to year basis. Indeed, sites such as Facebook and Myspace now count many millions of members within their respective orbits.

The possibilities for human interaction on social networking sites are almost limitless. Not only can members send plain vanilla messages to one and other, they also can create on the edge content as well. For examples, photos can be posted covering all sorts of activities, including drinking escapades, drug use, and sexually provocative encounters. And all of this can be available for the world to see.

Playing recklessly on social networking sites might seem well and good, especially for young people long before they consider entering the workforce in a real way. However, youthful and other indiscretions potentially can live forever on the Internet and might come back to bite later in more serious contexts.

Obviously, an employer that is considering various employee applicants may be disinclined to hire an applicant when a social networking site has shown the applicant to have engaged in conduct that the employer considers to be inappropriate. So, the question arises as to what limitations, if any, are there on employers who screen employees by viewing social networking site content.

In the United States at least, to the knowledge of this author, there are no specific statutory laws on the books that directly address the implications of employers reviewing social networking sites as part of employment decisions. Nevertheless, other laws may apply in this context.

For example, there are federal and state laws in place in the US that bar discriminatory hiring practices, such as preferential hiring of one race over another. To the extent that content viewed by an employer on a social networking site leads to an adverse and discriminatory hiring decision, it might be the case that that decision may be deemed to be improper.

Or, as another example, content on a social networking site could inform an employer that an applicant has a particular marital status, a specific sexual preference, is pregnant, or is suffering from a particular disease. This type of information usually cannot be gained during the employment application and interview process in the US, and to the extent such information learned from a social networking site is detrimental to an applicant in terms of the hiring decision, that could be held to be invalid.

And, even on social networking sites, there can be some expectations of privacy. Members can restrict access to their content only to their "friends," as an example. To the extent an employer violates the terms of services of a social networking site and the contact restrictions of members, an argument could be made that the employer improperly committed a privacy violation. Not only should employers not "hack" their way into social networking sites, they also must be up front and not misrepresent who they are on the Internet.

Notwithstanding the foregoing, while it may be true that employers may not be able to do whatever they want with the social networking content of prospective employees, such employees would be smart to conduct themselves on the Internet as if everyone were watching. Why? Because it might be true!

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