

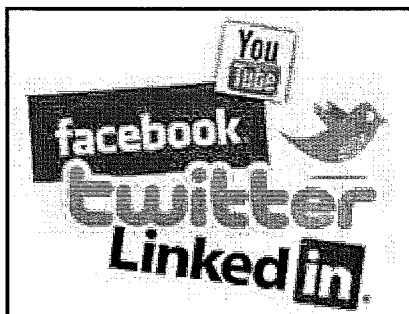
Workplace Privacy Data Management & Security Report

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Workplace Privacy, Data Management & Security Report

Unauthorized Employee Recommendations, References on Social Media May Put Employers at Risk

Written by Alexander Nemiroff



Employers are beginning to realize that their employees are sending or receiving recommendations on social media sites, such as **LinkedIn**, that are inconsistent with the employer's policies, or worse, are false or fraudulent. They need to do something about it.

A large number of social media web sites are allowing users to recommend the work performance or services of co-workers, vendors, and customers. Unfortunately, many employers are not paying attention to this phenomenon. To their chagrin, they are discovering serious problems with these recommendations only when it is much too late.

For many years, attorneys have advised employers that providing positive or negative references for former employees can be problematic. Negative references for employees can often lead to defamation actions. As for positive references, a number of courts have found employers liable who provided false positive references for former employees that employers knew had committed crimes or engaged in other misconduct. As a result, many employers today simply provide neutral references for all former employees.

Unsanctioned recommendations appearing on social media sites also can cause complications for employers. Take, for instance, an ill-timed positive reference published by a manager on a social media site extolling his former employee's honesty while, at the same time, but unbeknownst to the manager, the employer was contemplating litigation against the former employee for taking trade secrets or other confidential business information as he was leaving.

Anonymous recommendations or endorsements by employees also may run afoul of the **Federal Trade Commission's Guidelines on the Use of Endorsements and Testimonials in Advertising, 16 C.F.R. § 255**. For example, employees anonymously endorsing their own company's products without full disclosure of their relationship may trigger liability. The Guidelines require not only full disclosure of

such relationships, but that employers have procedures in place to prevent such an endorsement from being made.

To avoid these issues, employers should take several steps. First, employers need to amend their written social media and/or reference policies to address unauthorized employee recommendations and references on social media sites. Depending upon the circumstances, barring employees from making such references may be appropriate. However, this is not always practical or prudent for employers who are encouraging employees to promote their businesses through social media. Under these circumstances, employers may require that employees request authorization from their human resources department or other designated individual before making references or recommendations, and to make any necessary disclosures.

Simply amending social media and references policies and procedures, however, may be insufficient. Employers need to be vigilant and proactive in this area. **Appointing suitable personnel, and perhaps a social media manager**, to monitor public social media sites to ensure that employees are not violating these critical policies, is another measure employers should consider. When monitoring, special care should be taken by governmental entities not to violate an employee's constitutional right to privacy and by private employers not to infringe upon laws protecting employee off duty or protected concerted activities.