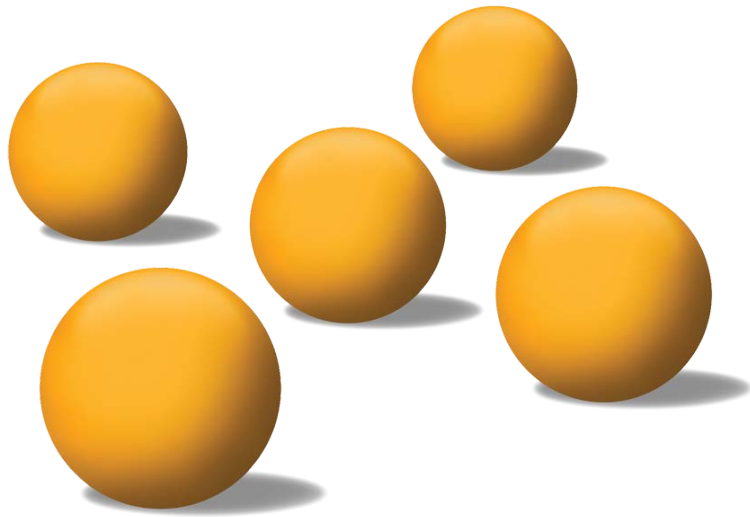


Making the Hiring Process Work



Mike Lucas
Kathryn M. Willis
Matthew Scully



Using Social Media in Hiring Decisions

- Screening and monitoring is lawful if unrestricted access to the Social Media page
- BUT --- Individual's page may include info you cannot ask about or consider (age, race, disability, etc.)





Scenario #1



Christopher is working the wurk! on Monday [edit](#)

[Wall](#) [Info](#) [Photos](#) [Boxes](#) [+](#)

[Update Status](#) [Write Note](#) [Add Photos](#) [Video](#)

What are you doing?

Christopher is

[Post](#)

Today

[All Posts](#)

[Wall Posts](#)

[Posts by Christopher](#)



wrote at 5:31pm

thanks dude!

Wall-to-Wall



Christopher wrote on the wall for the group [Diabetics in AL](#)



Christopher became a fan of [The UAW](#)



Christopher commented on his own photo. 10:03am



“ my favorite things: Fridays and beer

”



wrote at 8:31am

I Sounds like you're living it up

Will give you a shout. Looking forward to it. Cheers...

Wall-to-Wall



Christopher commented on his own photo. 6:25am



“

”



Christopher wrote on

's wall. 6:11am



wrote at 4:07am

Living the dream! British summers are the shit. Not sure why I'm heading down to Kaapstad in 2 weeks... aaaahhh yes!... GOOD TASTING BEER,

Wall-to-Wall

Yesterday



Christopher is listed as in a relationship with [John Smith](#)

3:27pm [Comment](#)



Christopher is friends with

7:29pm [Comment](#)



Christopher wrote on

wall. 9:25am

[View Photos of Me \(236\)](#)

[View My Friends \(587\)](#)

[Write something about yourself.](#)

Networks:
[Diabetics United](#)

Relationship Status:
in a relationship with [John Smith](#)

Birthday:
April 3, 1986

Friends

587 friends

[See All](#)



Posted Items

3 of 448 posted items

[See All](#)

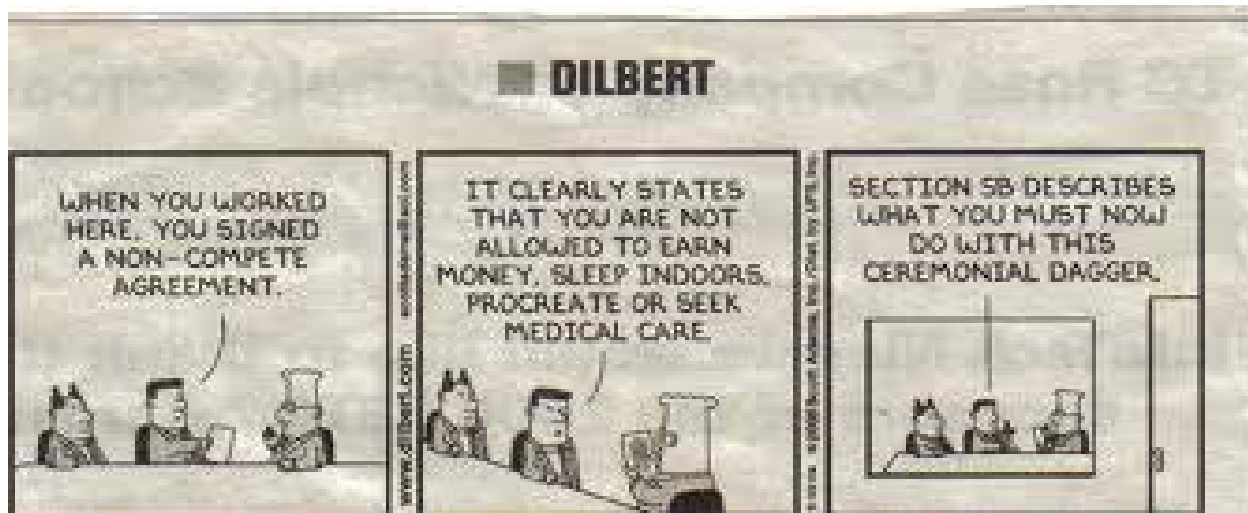


Using Social Media in Hiring Decisions

- Best Practices
 - Have non-decision maker perform search and report only non-protected information to decision maker
 - Consider addressing adverse information with applicant/employee to verify authenticity
 - If you screen, do it uniformly

Hiring Employees with Restrictive Covenants

- Almost all businesses have in place restrictive covenants with their employees
 - Covenants Not to Compete
 - Non-Solicit as to Customers
 - Employee Non-Solicitation
 - Non-Disclosure Agreement





Scenario #2



Hiring Employees with Restrictive Covenants

- Know the Risks
- Inquire if a restrictive covenant exists
 - Should you ask for a copy of the restrictive covenant?
- The existence of a restrictive covenant doesn't necessarily preclude you from hiring the employee
 - Enforceable?
 - Competitors?
 - Legitimate interest?
 - Other positions?
- Document expectations/restrictions with the future employee



Disparate Impact

- An employer's facially neutral policy or practice may still be unlawful even absent a showing of discriminatory intent merely because it has a significant adverse impact on a protected group
 - Employer's lack of discriminatory intent is irrelevant
 - Examples: Tests to screen temporary employees for permanent placement that disproportionately affect a protected group





Scenario #3



Disparate Impact

- Reasonably designed and administered to achieve a legitimate business purpose
- Individualized consideration
- Validation testing
- EEOC Guidelines on employer use of criminal background checks





Federal Contractors

- Office of Federal Contract Compliance Programs (OFCCP)
 - Ensures employers doing business with the federal government comply with the laws and regulations requiring nondiscrimination on the basis of race, color, religion, sex, national origin, disability, and protected veteran status.
- Equal Employment Opportunity Commission (EEOC)
 - EEO-1 Report





Federal Contractors

- On August 27, 2013, the OFCCP issued revised affirmative action regulations for protected veterans (Vietnam Era Veterans' Readjustment Assistance Act) and individuals with disabilities (Section 503 of the Rehabilitation Act)
- Contractors must invite Veterans and the Disabled to self-identify during the application process
 - OFCCP recently issued its official Self-Identification of Disability Form to be used
 - OFCCP created new category for veterans replacing the "Other Protected Veterans" category with "Active-Duty Wartime or Campaign Badge Veteran"



Questions?