

E-Diligence Guidelines & Best Practices

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Disclaimer: The following guidelines and best practices are suggestions only. Any individual or organization interested in setting an e-diligence policy should contact employment counsel.

- **Develop an E-Diligence Policy**
 - The policy should include information, guidelines and timing for e-diligence in the recruitment and hiring processes.
 - The policy may also include guidelines for employee usage of online/social media tools within your organization and information about how, why and when employees' social media pages will be reviewed by the employer.
 - The policy should be reviewed to ensure compliance with the most current labor, privacy and other related laws.

- **Tips for Developing an E-Diligence Recruitment Policy¹**
 - Create a list of lawful information to be acquired from e-diligence (e.g. illegal drug use, over-consumption of alcohol, tendency to support racist or other discriminatory groups, general poor judgment in maintenance of public persona, etc).
 - Create a list of guidelines or standards regarding what type of photos or information will disqualify a candidate and why.²
 - Screen applicants in a consistent manner. If the organization does not have the resources to screen ALL applicants according to the same criteria, the organization must be consistent with the subgroups they screen (e.g. candidates for certain positions, levels, etc). The organization should not decide to screen individual candidates based on subjective criteria.
 - Have a neutral party in a non-decision making role screen candidates by filtering out any protected class information and only reporting on information which may lawfully be considered.
 - Consider conducting e-diligence AFTER an initial in-person interview has taken place (i.e. after the employer has seen the candidate's visible protected characteristics). This will eliminate the possibility that the hiring decision was based on those same characteristics found in an e-diligence search.

¹ Impact of Facebook Privacy Settings On Employers, Law360, Renee M. Jackson, Nixon Peabody LLP, December 16, 2009

² MySpace of Yours?: How Can a Web Site Cost Someone a Job?, National Association of Colleges & Employers, George C. Hlavac, Esq. & Edward J. Easterly, Esq., Summer 2008

E-Diligence Guidelines & Best Practices (continued)

- Employers must have legitimate, nondiscriminatory reasons for hiring decisions with documentation to support the decision.
- Any employers considering making a hiring decision based on information derived from e-diligence (e.g. Facebook, MySpace, Twitter, etc) should consult with employment counsel prior to doing so.
- Erroneous information is pervasive on the Internet. It is always advisable to speak with an applicant before making a hiring decision.²

- **Provide Training**
 - Every organization should train those involved in the recruitment and hiring process on how, when and what to review as part of the organization's e-diligence. For example, recruiters must understand what characteristics are "protected" (e.g. age, race, gender, religious affiliation, disability, etc.) and what characteristics or activities are "unprotected" (e.g. illegal drug use, over-consumption of alcohol, tendency to support racist or other discriminatory groups, general poor judgment in maintenance of public persona, etc)³ and how they relate (or do not relate) to a hiring decision.
 - Every organization should also consider training their employees on privacy, computer and Internet policies, provide explicit guidelines and/or information on restrictions relating to the use of social media tools at work, and, if applicable, guidelines for effective professional use of approved work-related online/social media tools (e.g., marketing, branding, networking social media sites that promote the goals of the professional as a representative of the organization).

³ Impact of Facebook Privacy Settings On Employers, Law360, Renee M. Jackson, Nixon Peabody LLP, December 16, 2009