

## 2010 Annual Education Conference

# Employment Law for the Recruiting Manager

Nancy Berry, SPHR  
Justin C. Eller, Esq.  
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## Why Are We Here?

- To learn about the law
- To learn how to assess and minimize risk
- To learn about best practices

## What Activities Are Covered by Employment Laws?

- Hiring and firing
- Compensation, assignment, or classification of employees
- Transfer, promotion, layoff, recall
- Recruitment
- Use of company facilities
- Training and apprenticeship programs
- Fringe benefits
- Retirement plans, and leave
- Other terms and conditions of employment



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## Laws Governing Employment



- Title VII – race, color, national origin, religion, sex
- ADEA – age (40+)
- Equal Pay Act – “equal pay for equal work”
- FLSA – minimum wage and overtime
- ADA – disability
- FMLA – leave for serious health conditions and military leave
- OSHA – occupational safety & health
- State Laws – sexual orientation, gender identity/expression, wage payment, privacy, workers’ compensation, and more...

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## Interviews – Practical Pointers

### Do:

- Consider all qualified applicants before making a decision
- Obtain the same documents from everyone (e.g., writing sample, transcript, etc.)
- Have a list of standard questions prepared in advance
- Ask open-ended questions – Who, What, When, Where, Why, How
- Make a record of the interview (on a piece of paper *separate* from the resume / application)

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## Interviews – Practical Pointers

### Don't:

- Take notes on the application or resume
- Make notes about the applicant's appearance or dress
- Ask questions about race, age, ethnicity, religion, disability, etc.

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## What Questions Am I Allowed to Ask?

### Yes

- What is your full legal name?  
Have you used any other names in the past?
- What was your attendance record at your prior job?  
Can you work the hours required for the position?
- Can you provide proof of eligibility to work in the U.S.?

### No

- How old are you?
- Are you married? Have you ever been married?
- Do you have any physical disabilities?
- Do you have kids? Do you have any health or personal problems that will affect your attendance?
- Are you a U.S. citizen? Do you have a visa or green card?

## Performance Evaluations

- Complete evaluations on time
- Include positive and negative performance
- Nothing should come out of left field – discuss performance prior to the written evaluation
- Be honest in assessments, but NOT personal – base it on facts related solely to conduct and performance, NOT feelings

## Documentation Generally

- Why is it important?
- Be objective and factual in documentation
- Confidentiality
- Remember: Documentation can be used by you and against you in legal proceedings

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## Due Diligence

- Background checks are under increased scrutiny
- EEOC Chairman has called for the agency to issue new guidelines
- EEOC filed its first lawsuit arising from screening practices late last year
- Federal legislation - Equal Employment for All Act

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## The New Era of Background Checks

We use one or more of the following resources to obtain information regarding prospective employees...

1. Free Internet search engines
2. Social networking sites
3. Message boards, blogs, and personal websites
4. We don't use any of these

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## Benefits of Conducting Online Background Checks

- They're free.
- They're quick.
- They're helpful from a risk management perspective.
- You can find information that might not turn up in a criminal background check (or anywhere else).
- If there's Internet "dirt" on a prospective employee, it's better to find out now.

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## Hypothetical

You're deciding between two candidates for a position in your summer associate program. Background checks did not turn up anything problematic on either of them. You decide to do a quick Internet search, which reveals the following:

Candidate #1 has a blog that she updates every day. In a recent blog entry, she mentioned that she and her husband are trying to have a baby, and that she hopes to be pregnant within the next year.

For Candidate #2, you find numerous posts on a message board under her name. In one of those posts, she talks about her job search and mentions that she plans to work for a large firm for a couple of years and then leave to do public service work providing legal services to the poor Hispanic community where she grew up.

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## What Would You Do?

1. No call-back interview for Candidate #1
2. No call-back interview for Candidate #2
3. No call-back interviews for either of them
4. Call-back interviews for both candidates

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## Potential Pitfalls

Searching the Internet and social media may uncover information that should not play a part in your decision whether to interview, hire, etc.

- Age
- Ethnicity & national origin
- Marital status
- Disability
- Religion
- Sexual orientation
- Bankruptcies

## Hypothetical

You're considering the following three candidates:

1. Brandon is the candidate everyone agrees is the most qualified. When you "Google" him, you find a website mentioning an author with the same last name, along with a description of the book the author is writing about his experiences in transforming from a woman to a man.
2. Sheeda is not quite as qualified as Brandon. When you Google her name, you don't get any "hits." However, when you do a search on FaceBook, you find numerous pictures of Sheeda drinking alcohol and smoking what appears to be a joint.
3. Tom is not quite as qualified as Sheeda. You don't Google his name because his last name is so common.

## What Would You Do?

1. Hire Brandon
2. Hire Sheeda
3. Hire Tom
4. Other

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## Off-Duty Laws

- California
- Colorado
- Connecticut
- North Dakota
- New York



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## Practical Pointers

- If you are currently conducting credit checks on applicants, consider whether they are really necessary.
- Perform the same types of searches for all candidates for a particular position.
- Only search for information that's relevant to the job at issue.
- Be able to articulate why a check is needed.
- Don't base any employment decisions on information that you couldn't have asked about during a job interview.

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## Practical Pointers

- Be familiar with state law requirements.
- Don't ignore inconsistencies or red flags.
- Consider providing candidates with an opportunity to explain before taking action.
- Keep the results confidential.
- Comply with the Fair Credit Reporting Act when background checks are performed by third parties.

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## Social Media and Employment Law

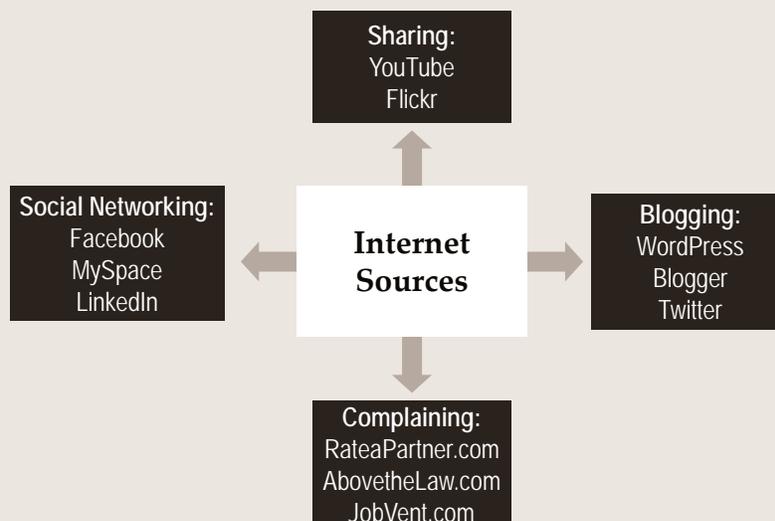
What is social media? Internet-based tools that allow for the creation and exchange of user-generated content



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## Examples of Social Media



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## Here's What You're Up Against

- "Repulsive character. Pretends to know everything. Extremely arrogant and unpleasant to work with."
- "This guy is an incompetent jerk who treats everyone like crap."
- "He screams and yells for no reason and tries to intimidate people. He's a jerk."
- "He has really hurt morale here and it's all a power trip."
- "He's a nightmare to work for and not the guy you want as your lawyer."

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## What Are the Potential Benefits of Social Media?

- Recruiting
- Branding
- Advertising
- Awareness of issues
- Responding to rumors & negative publicity
- It's free!



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## What Are the Potential Risks to Employers?

- Reduced productivity
- Privacy
- Confidentiality
- Inappropriate content
- Defamation claims
- Invitation to hackers



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## Scenario #1

Johnny tells his boss, Laura, that due to a family emergency he is taking off Thursday and Friday. Laura is surfing Facebook and finds a picture of Johnny in a Luke Skywalker costume, which was posted on Johnny's Facebook page at 2:00 a.m. Friday morning.



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## Scenario #2

Roy has several performance problems during the summer associate program. At the conclusion of the program, he is not offered a position. Roy later asks one of the partners to give him a recommendation on LinkedIn.



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## Scenario #3

One of the attorneys at your firm calls and informs you that she found the following post about the firm on JobVent.com:

This firm sucks!!!  
The managing partner Joan Adams is to blame. Using \$ to take expensive trips-not paying employees. She is a thief!!!



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## Drafting a Social Media Policy

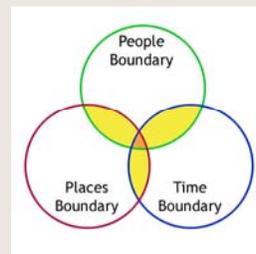
- Why have a policy?
- Factors to consider:
  - ▶ Level of tolerance for employee use of social media
  - ▶ How to respond when an employee posts something inappropriate
  - ▶ How you will monitor compliance and enforce the policy
  - ▶ Repercussions for violating the policy
  - ▶ Whether to use social media for business development

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## Provisions to Consider

- Restrictions on the use of company technology
- Clarify that social media is subject to all existing company policies
- Employees must clarify that they're speaking only for themselves
- No use of company name, logo or copyrighted material
- No disclosure of confidential information
- Limits on "networking" at work
- Training on responsibilities related to posting



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*QUESTIONS?*

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