

Checking References in the MySpace Era

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Many, if not most, of today's young adult job seekers have established personal pages on sites such as Facebook, MySpace, Xanga and LinkedIn. Seemingly without qualms, they make information about themselves available to anyone who surfs the Web. Until fairly recently, businesses were ignoring the opportunity offered by these postings to learn more about job applicants by "checking them out" on the Internet. Those that choose to look online need to recognize the risks inherent with this 21st century technique and develop a set of parameters for effective applicant screening in the digital age. As always, employers should consider the following: 1) how to maximize the chance of hiring someone who will be a dependable, successful employee; 2) how to minimize the risks of negligent hiring liability; and 3) how to avoid legal liability under various statutes and the common law of invasion of privacy.

The Equal Employment Opportunity Commission and state agencies will occasionally take the position in addressing a charge of discrimination that if an employer knows some fact about an individual that implicates a protected status, the presumption is that it was considered and could have made a difference. The final consideration to be aware of is the concern about a potential invasion of privacy claim brought by an applicant. No one should be able to convincingly claim to have an expectation of privacy as to information available to anyone with an Internet connection. However, courts have held that users of these sites who post information in sections that are password-protected or "by invitation only" have a reasonable expectation that such information will remain private.

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