

DON'T FEAR THE FUTURE: USING INSTAGRAM AS A RECRUITING TOOL

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By now, most employers recognize that they shouldn't peek at the social-media profiles of applicants for all sorts of reasons. It's sort of like driving past an applicant's house hoping that you can catch a glimpse of their private life through their front window. While in most states that might be legal, it's a pretty stupid idea.

Besides being generally creepy, you'd probably be very embarrassed if you got caught; and most importantly, you might learn things about your applicant that you'd rather not have known at the time you are making the hiring decision. After all, a rejected applicant won't have a successful discrimination claim if you can prove you didn't even know they were in a particular protected class, but if the applicant can show that you peeked at their Instagram profile and learned they were in that class, it's a whole different story.

But lately employers are turning the tables by using the hottest social-media app on the market today, Instagram, to directly recruit candidates. And while this strategy is a smart way to reach out to millions of potential applicants and build a strong brand, there are still a few employment law issues to take into consideration.

First things first. While most readers are familiar with social-media platforms – 74% of all internet users are on some

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form of social media or another – don't be alarmed if you haven't heard of or used or don't quite understand Instagram. The easiest way to learn about it is probably to ask your teenager or grandchild to show you his or her Instagram feed on their mobile device. That's because Instagram is heavily skewed towards the younger generation. Many teenagers and 20-somethings are abandoning or foregoing Facebook altogether in favor of Instagram, considering Facebook to be the social-media platform for people their parents' age.

The numbers support this theory – in late 2011, Instagram had only 10 million users, and by August 2014 that number ballooned to over 150 million. That astronomical rise is fueled by younger people: over 90% of Instagram users are under the age of 35, compared to only about half of Facebook users being in that Generation Y (and younger) cohort. Several years ago, 42% of social-media users said that Facebook was the "most important" social-media site to them; today that number stands at only 23%. As of today, an equal number (23%) of social-media users say that Instagram is the most important social-media platform for them, and that number is projected to do nothing but rise in the coming years. You may not know a lot about Instagram, but your kids sure do.

At its simplest, Instagram is a lot like Facebook but with a few distinct differences. Once you set up your profile, you can follow your friends, your favorite celebrities, and those companies you are interested in, and by doing so you can see what they post; at the same time you can post to your account as well and those that follow you will see what you are up to.

But unlike Facebook, Instagram is exclusively a smartphone or tablet app, more geared towards those that use their mobile devices for social purposes than for business. And while Facebook allows you to post written messages, Instagram is designed for pictures. Users can manipulate the images in a number of interesting and creative ways, and while you can also add text (including ever-present #hashtags), it is primarily a visual medium.

You have probably figured out from the statistics above that

Instagram is no passing fad (unless you think this whole “interwebs” thing is going to go out of style soon, in which case, you should probably just stop reading now). Companies and organizations have figured out the same thing, too, and many have tried to take advantage of its widespread appeal to capture the attention of applicants. In the last several years, it has become increasingly common to see companies create direct advertisements seeking to recruit new candidates via their Instagram feed.

They have done this in creative and inventive ways; one of the more popular Instagram recruiting messages in recent months saw a national hotel chain post a series of pictures of their current employees holding hand-written signs with their names and their dates of hire on them. The message was that these smiling individuals all enjoyed their time at the company and could express themselves individually while working there, so maybe you should join up too.

Other companies will post pictures of their employees enjoying themselves on the job or engaging in team-building activities or community-service projects, providing a glimpse into the average day of an employee and hoping that talented people seeing these images will want to join in on the fun. Regardless of the method, the companies hope to create buzz and to reach an audience on their own turf... after all, they know that many people spend a great deal of their day scrolling through their phone or tablet.

While this trend will increase in the coming months and years, organizations that decide to employ Instagram for recruiting purposes will want to consider the following employment law cautions:

YOUR AUDIENCE IS REALLY, REALLY YOUNG

If you’ve learned anything in the past few minutes, it’s that Instagram is primarily a young person’s tool. Therefore, you should expect that those people who present themselves as applicants from following Instagram will be heavily-skewed

towards the twenty-something demographic. And while there's nothing inherently wrong with having young people apply for jobs at your company, there certainly could be something wrong if Instagram is your sole recruiting method and you blatantly ignore candidates in their 40s or older.

"But wait," you might say, "we'd take a look at anyone who applied for the job no matter their age, it's not our fault that the 55-year old candidate isn't on Instagram." What you are describing there could be a prime example of "disparate impact" discrimination, where your hiring choice isn't purposefully discriminatory, but the method you choose to make your employment decision leads to a biased result.

In the 1980s, some employers unknowingly walked themselves into disparate impact claims by solely relying on word-of-mouth hiring, which often led to new employees who were in the same demographic cohorts as current employees (since it is common for many national and ethnic groups to closely associate with each other). The result was a very homogeneous pool of employees that unintentionally excluded large segments of the population and led to discrimination claims.

Many human resources observers predict that a similar pattern could emerge should employers restrict their hiring methods to 21st century tactics like Instagram. The bottom line is that employers should use Instagram as but one tool in the complete arsenal of available options when recruiting, not foregoing more traditional methods but instead using Instagram to complement them.

SHOW YOUR DIVERSITY

When posting pictures of your current employees in one of your recruiting blitzes or branding exercises, make sure you present an accurate picture of your workforce. You should ensure that more than just a select few "beautiful people" get in the frame, so train your photographers and social-media managers to widen the focus of your Instagram

campaign beyond a lucky few to include employees of all shapes and sizes, ages, ethnicities, nationalities, positions, etc. And if you're embarrassed when you realize that your existing workforce looks a little too standardized and uniform, maybe it's a good time to take a step back and address issues of diversity at your workplace before you worry about Instagram.

GET YOUR PERMISSION SLIPS

If you are going to make one (or more) of your employees the face of your new recruiting campaign that could (hopefully) go viral and might even go national moments after you press the "share" button, you're going to want to get express approval from the person behind the face. While in some states it may be sufficient to simply have a policy in your handbook whereby employees grant permission to have their likenesses reproduced for legitimate business purposes by virtue of their presence on the job, you may want to consider getting written authorizations if you have grand Instagram plans for the pictures.

Employers that follow these tips will be on the forefront of the recruiting trail, well ahead of your competitors stuck in the 20th century, and (hopefully) avoiding pesky labor and employment law problems. And for all you know, you might even impress your teenager at home (that is, until they find the next hot social-media platform in a few years).

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