



Germany Proposes Amendments to Data Protection Act to Limit Employers' Use of Facebook in Hiring

Insights

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The German Interior Ministry has announced a proposed privacy law that would prohibit employers from viewing the Facebook profiles of potential employees. For cross-border employers, this is the first alarm that they may soon be prohibited from using information gleaned from social networking sites in recruiting.

The proposed legislation, which has been backed by Chancellor Angela Merkel's cabinet and sent to the Bundestag for debate, would be the first law to make the public Facebook profiles of potential employees off-limits in hiring decisions. The law would also prohibit employers from videotaping current employees other than in very limited circumstances, and would require the company to unambiguously announce the video recording.

The proposed legislation is another step by continental governments to protect data as their citizens grow increasingly wary over the depth of data gathered by online services. In recent months, Germany and Italy have initiated investigations into the data gathered by Google as part of its Street View program, and Swiss and German authorities initiated separate investigations into Facebook's gathering and use of data from third parties (i.e., non-users).

The proposed law would be of special interest to multinational employers because the law applies to the public profile of Facebook users, which until now had been considered part of the public domain and thus "fair game" for employers to peruse. Indeed, recent surveys have shown that nearly half of U.S. employers conduct some type of online reconnaissance when recruiting employees ([link](#)). We should note that this is a developing area; most employers have taken the stance that they may consider social network postings in making personnel decisions. While many employees in the U.S. and abroad have been pink slipped for statements made on social networks (examples [here](#) and [here](#)), employers have increasingly been challenged by employees who have had negative action taken against them for online activity. For example, in one pending case, an employee has alleged a wrongful discharge after being forced to resign for posting pictures on her Facebook page the employer deemed inappropriate. In Germany, at least, this type of action may soon be prohibited by law.