Human Resources and Employment Law Implications of Social Networking

In 2007, Morgan, Brown & Joy released a client alert entitled "Invading my Personal MySpace: Legal Pitfalls and Practical Advice for Employers Using Social Networking Sites to Investigate Job Applicants." At that time, social networking sites were considered a relatively new way to check the profiles of potential new hires. Since 2007, the use of social networking sites expanded greatly.

The 2007 MBJ Client Alert[1] cited a CareerBuilder.com survey which revealed that 12% of employers admitted that they used social networking sites such as Facebook and MySpace to research job applicants. According to a more recent CareerBuilder.com nationwide survey[2] of more than 3,100 employers, 22% of hiring managers said they use social networking sites to research job candidates.[3] In that same survey, an additional nine percent said they don't currently use social networking sites to screen potential employees, but plan to start.[4] Of those hiring managers who have screened job candidates via social networking profiles, one-third (34%) reported they found content that caused them to dismiss the candidate from consideration.[5] The information obtained on social networking sites is not always used in a negative manner: 24% of hiring managers who researched job candidates via social networking sites said they found content the helped to solidify their decision to hire the candidate.[6]

Statistics about the use of social networking vary, but some of the most startling statistics come from a 2007 survey conducted by Vault.com. According to that survey, as many as 44% of employers use social networking to look at profiles of candidates. Of those employers, 82% say that something they perceive as negative on a profile would affect their decision to hire the applicant. Most employees (75%) are aware that potential employers may look up their profiles, and 28% think that something on their profiles might be a turn off to future bosses. As a result, 57% of employees take some sort of security measures, such as using the websites privacy controls or editing their profiles when in the midst of a job search.[7]

Although social networking has often been associated with younger users, the Pew Internet & American Life Project's December 2008 survey reveals a shift. Specifically, the share of adult internet users who have a profile on an online social network site has more than quadrupled in the past four years, from 8% in 2005 to 35% now.[8] However, at its core, use of online social networks is still a phenomenon of the young: 75% of online adults between ages 18 and 24 have a social network profile. Profile ownership drops to 30% among 35-44 year olds, 19% among 45-54 year olds, 10% among 55 to 64 year olds and 7% of online adults 65 and older.[9] Social network users are also more likely to be students — 68% of full time students and 71% of part-time students have a social network profile, while just 28% of adults who are not students use social networks.[10] Among social network users, 37% visit their profile daily, 23% visit every few days, 15% view their profile once a week and 23% visit their profile less often than once a week.[11]

Given the increasing popularity of social networks, more and more employers are venturing onto

these online forums in order to screen job applicants, track their current employees, establish connections with peers, and increase their visibility to the general public. Currently, nearly two-thirds of employers who expect to use social networking sites plan to advertise on those sites, and more than half will use the sites to network with potential candidates.[12] Additionally, social networking sites provide a means for employers to track their employee's behavior.[13]

What are the popular networking sites?

In 2007, MBJ's client alert focused on MySpace, as it was the most popular social networking site. However, statistics show a shift in the demographics of users and the popularity of social networking sites – Facebook now edges out MySpace worldwide. The phenomenon of online social networking has evolved to include more than the teenage stereotype looking to expand his/her network of online friends. People of all ages and backgrounds have discovered that they can enrich their lives through the contacts they make on a social networking website. As of April 1, 2009, Wikipedia's "List of Social Networking Websites" contained links to 141 social networks on the Internet.

1)   MySpace

MySpace is promoted as "an online community that lets you meet your friends' friends. Create a community on MySpace and you can share photos, journals, and interests with your growing network of mutual friends."

In the 2007 MBJ client alert, it was reported that MySpace was the world's fourth most popular English-language website and the third most popular website in the United States.[14] At that time, it had over 100 million members and reportedly attracted new users at a rate of 230,000 per day.[15] As of January 2009, MySpace had more than 125 million monthly active users worldwide.[16] Many reports (blogs) indicate the popularity of MySpace is decreasing as Facebook becomes more popular.

2)   Facebook

Facebook was designed as a social networking site for Harvard students. After spreading from Harvard through the university ranks and down into high schools, Facebook was opened to the public in 2006. The website is promoted as a site that "gives the power to share and makes the world more open and connected. Millions of people use Facebook everyday to keep up with friends, upload an unlimited number of photos, share links and videos, and learn more about the people they meet."

As of May 2009, Facebook boasted more than 200 million active users. More than 100 million users log on to Facebook at least once each day.[17] Facebook has a reported 250,000 new registrations a day.[18] In November, 2008, Facebook drew 200 million worldwide visitors. In December 2008, 222 million people visited the site.[19]

3)   Twitter

Twitter is promoted as "a service for friends, family, and co-workers to communicate and stay connected through the exchange of quick, frequent answers to one simple question: What are you

doing?" Through Twitter, rather than just sending updates to all of your friends, who may have nothing in common with each other, you can target individuals with similar mindsets and/or goals.[20] As one attorney noted, "it is what you might call a hyper-connection site that allows you to "micro-blog" what you're doing to the minute. It's free and you can send brief messages to everyone in your network. Think of it as a combination of texting and blogging. Individuals use it when they travel to keep their friends and relatives up to date with their activities. For lawyers, it can be a valuable way to post links to Power Point Presentations and videos of seminars. Those who receive your posts may then blog about your presentations or pass them along to others."[21]

The number of people using Twitter has more than tripled in less than a year. The site has been used by the Obama campaign and CNN.[22] Twitter attracted 1.2 million visitors per month as of April 2008, mostly in the 18-24 male category.[23] By January 2009, Twitter had jumped from 22nd place to 3rd place in terms of monthly visits.[24]

4)   LinkedIn

LinkedIn was created in 2003 as an online social network for business professionals. Its demographics are older and wealthier than those of other sites.[25] As described by Rick Aristotle Munarriz of The Motley Fool (www.fool.com) put it, "Lets call [LinkedIn] a networking social site instead of a social networking site, because LinkedIn is really all about corporate networking."

An individual's network consists of the people you connect with directly, their connections, and their connections, so that you are always within three degrees of connecting with anyone else.[26] It allows people to mine for potential clients, service providers, subject experts, etc. You can also search for business opportunities and for jobs or job candidates.[27] LinkedIn has an international membership of more than 20 million professionals from some 50,000 companies.[28]

How Can Employers Use Social Networking Sites?

As already noted, business use of social networking tools has grown tremendously in recent years. Social networking has particularly drawn the attention of advertisers and corporate communications specialists. The internet has created hundreds of communities of interest for marketing, branding, and the introduction of new products and services. In a down economy, recruiters and unemployed workers may use such technologies to help change career directions. And some sources suggest that social networking can perform admirably in the event of emergencies.[29] So…how does it work?

1)   Accessing Online Profiles of Potential and Current Employees

Often, the starting point for an employer looking to gain information about a potential hire or current employee is Google. A basic Google search will often return extra-curricular activities, such as athletic endeavors, and printed information, such as wedding or engagement announcements. Additionally, an employer can often find the individual's social network profiles through Google.

However, as the popularity of social networks increases, so does the use of available privacy settings. Seminars and workshops are conducted across the country, informing students and employees of the

danger of public profiles. They are increasingly encouraged to set their privacy settings so that their profiles are not available to the general public. They are also advised to clean up their profiles.

Despite the available technology that can potentially limit or block unwanted social network users from viewing social networking profiles, many people simply do not activate their privacy settings.[30] Other social networkers enable their privacy settings, but fail to realize that employers nonetheless may be able to gain access to their profiles.[31] As one attorney wrote,

"Hiring companies can access potential hires' social networking profiles in a variety of ways. Not long ago, some of the employees now involved in making hiring decisions for their companies were students with their own Facebook profiles. Graduates can keep their profiles and maintain connections to their colleges' social networks, thereby maintaining connections to the college students who make up the next wave of employment hopefuls. This phenomenon may not be pervasive yet since Facebook and other social networking sites have only existed for a few years. However, as Facebook and other social networking sites gain popularity among college students and as more student Facebook users graduate and join the world of employment, this trend may become increasingly prevalent. Even if employees never had Facebook profiles during their college years, many employees still retain their college email addresses or a valid alumni email address. With a college or alumni email address, employees can create profiles and become affiliated with their undergraduate universities' networks, thereby acquiring access to current students. To those students, these employees will simply appear to be other students and alumni similarly interested in using Facebook as a social networking tool rather than as an employment screening tool."

Some companies also hire current students who can access their peers' social networking profiles and effectively circumvent any privacy settings a potential hire may have put in place to attempt to restrict unwanted persons from accessing their profile.[32]

2)   Accessing Profiles …Why do it?

As noted earlier, employers use social networks for many reasons, including advertising and outreach. However, one area that garners a significant amount of attention is an employer's use of information obtained on social networks when making employment decisions. There is no way to list *all* of the ways employers use information obtained from social network profiles. However, the following is a small sampling of the ways employers are using the information they find online:

- On Halloween, 2007, Kevin Colvin, an intern at the Anglo Irish Bank of North America e-mailed his boss saying something "had come up at home in New York" and that he "needed to miss work the next day." The next day his boss decided to check Colvin's Facebook page and discovered pictures of the man dressed as a fairy and holding a beer at a Halloween party in Worcester, Mass., the night before. Rather than reprimanding him, the boss sent Colvin this e-mail: "Thanks for letting us know – hope everything is ok in New York (cool wand)" with the fairy picture from Colvin's Facebook site attached. The boss also blind copied other company employees.[33]
- In March of 2009, an employee of the Philadelphia Eagles was fired for criticizing his employer on his Facebook page. Dan Leone, a gate worker at the stadium, posted an angry, expletive-

laced complaint about the team's failure to re-sign safety Brian Dawkins. Management found out and fired him for making the team look bad.

- Thirteen members of a cabin crew at Virgin Atlantic airlines were fired after sharing all-too-candid impressions of their employer and its planes in a Facebook group.
- A story reported on MSNBC.com cited an interview with a corporate recruiter charged with hiring physicians. As part of the recruiter's due diligence he logged on the Facebook site of a young female psychiatrist. After finding pictures of the doctor taking off her shirt at parties (on more than one occasion) he called the candidate and asked for an explanation. He apparently was unimpressed and did not offer the position, noting that, "Hospitals want doctors with great skills to provide great services to communities. They also don't want patients to say to each other, 'Heard about Dr. Jones? You've got to see those pictures.'"[34]
- One recruiter recounts how she had found "the ideal candidate" for a prestigious consulting firm. Then, just out of curiosity, she ran the applicant's phone number on a search engine, and – wow! Up popped some rather explicit ads for discreet adult services that the applicant was apparently providing at night. Another recruiter tells the story of finding an applicant's MySpace page, where the intern had demonized his firm, his boss and his coworkers in considerable detail and by name.[35]

Potential Dangers of Social Network Screening

In the past few years, there has been a significant amount of discourse about the potential legal issues resulting from screening a job applicant's social network profile and form tracking information about current employees. For example, when visiting a job applicant's online profile, an employer may gain access to information that employers otherwise are prohibited from inquiring about in hiring, such as disability, race, age, and religion. If the employer then doesn't hire the applicant, the employer should be prepared to offer a nondiscriminatory reason for rejecting the application. Another consideration is the issue of privacy. As noted earlier, many of the social networking sites have privacy policies and many users work under the assumption that their information is "private." Additionally, when conducting background checks, employers are required to comply with the Fair Credit Reporting Act (FCRA). Under the FCRA, employers must obtain a candidate's consent before an agency may begin looking into his credit history and putting together a consumer report.   If a consumer reporting agency peruses a social networking page, employers run the risk of being accused of making a hiring decision based on character without following the FCRA's requirements.

1)   Violations of Anti Discrimination Laws

A candidate may say or depict all sorts of things that reflect race, color, religion, national origin, ancestry, medical condition, disability (including AIDS), marital status, sex (including pregnancy), sexual preference, age (40+), or other facts an employer may not consider under federal law or state law.[36] Federal anti-discrimination laws prohibit employers from making adverse employment decisions, including failing to hire a job applicant, on the basis of his or her membership in any number of protected classifications. Many state laws offer similar and additional protections. For example, Massachusetts law guarantees that applicants "shall not be denied their right to work" on the basis of their sexual orientation, genetic information, ancestry and mental or physical

handicap/disability.[37]

On a job application or during an interview, employers are permitted to ask applicants for information directly related to the applicant's ability to perform the job for which he or she is applying. Employers are prohibited, however, from asking questions that implicate the applicant's membership in a protected class pursuant to federal and/or Massachusetts anti-discrimination laws. For example, employers may not ask any questions about an applicant's appearance (or request that the applicant send a photograph with his/her application), ancestry, ethnicity or primary language, religious obligations and holidays observed, relationships or sexual orientation, childbearing or child rearing plans, date of birth, past treatment for drug abuse or alcoholism, and criminal background, such as arrests or detentions where no conviction resulted.[38] Yet, employers may glean nearly all of this forbidden information (and much more) by simply viewing an applicant's online profile.

In the failure to hire context, anti-discrimination laws may come into play when employers refuse to hire an applicant. Employers may learn some intimate details about job applicants upon exploring their online profiles but must make sure they are not tempted to use this information in their hiring decisions. Further, it is not unforeseeable for a disgruntled applicant to allege that he or she was rejected for a job because the employer was improperly motivated by information the employer saw on the applicant's profile (i.e., the applicant's race, sex, age, etc.). Naturally, it will be difficult for the applicant to prove to a court that his or her online profile was considered by the employer in its decision to reject the applicant, especially if the employer can easily refute such allegations by explaining that it had a well-qualified applicant pool from which to hire a new employee.

A related issue is whether a firm is treating all applicants in a similar fashion. If recruiters or human resource staffers are performing internet searches on a hit or miss basis, with no written policy or standard approach, an applicant that is subject to adverse action as a result of such a search can potentially claim to be a victim of discrimination.[39]

The following are examples that illustrate how researching an applicant's online profile could negatively influence an employer:

- An applicant may freely disclose his or her sexual orientation or religious beliefs on MySpace, or it may be easily discernible by the user's commentary, blog, or pictures.
- In another likely scenario, an employer may observe that the applicant is unmarried with children and may be influenced by the applicant's responsibility to coordinate child care arrangements.
- What if the employer discovers that the applicant has or had a serious medical condition, like heart disease or breast cancer?

2)   Invasion of Privacy

Information posted online is arguably part of the public domain; users cannot possibly have a reasonable expectation of privacy in the content they choose to post on their profiles, can they?

When users register for Facebook or MySpace, they must agree to the website's terms of service and

privacy policies in order to form a profile and use the website. Among others, there terms include how and when the sites may collect information from a user's profile and computer, how the websites track a user's usage, and how they use the information collected from a user's profile. The privacy policies describe when other users can view the profile and when and how the websites can disclose information to a third party. The privacy policies are mandatory and must be accepted by a user attempting to register for the Web sites.[40] As of May 15, 2009, Facebook's privacy policy read:

"We built Facebook to make it easy to share information with your friends and people around you. We understand you may not want everyone in the world to have the information you share on Facebook; that is why we give you control of your information. Our default privacy settings limit the information displayed in your profile to your networks and other reasonable community limitations that we tell you about."[41]

Based on this policy, it is possible to see why Facebook users may believe their information posted on the social networking sites is secure. However, the policy continues as follows:

"You post User Content (as defined in the Facebook Terms of Use) on the Site at your own risk. Although we allow you to set privacy options that limit access to your pages, please be aware that no security measures are perfect or impenetrable. We cannot control the actions of other Users with whom you may choose to share your pages and information. Therefore, we cannot and do not guarantee that User Content you post on the Site will not be viewed by unauthorized persons. We are not responsible for circumvention of any privacy settings or security measures contained on the Site. You understand and acknowledge that, even after removal, copies of User Content may remain viewable in cached and archived pages or if other Users have copied or stored your User Content."[42]

As such, there is a strong presumption that a user does not have a reasonable expectation of privacy to information posted on a social networking site. By signing on to Facebook or MySpace and providing personal information for others to see, a user is, in effect, not seeking to preserve the information as private, but is instead making a choice to publicize this information for others.[43] Profiles on Facebook or MySpace are unlike e-mails in that they are not strictly a person-to-person communication. Users are communicating information for more than one person by posting that information on a public platform.[44] Therefore, while an employee might contend that by investigating their "private" lives, an employer violates their right to privacy, it is difficult to imagine that an applicant would be able to claim a "reasonable" expectation of privacy to information in the public domain.

3)   Fair Credit Reporting Act

As noted above, employers performing searches of applicants' user profiles may also tread dangerously close to violating the Fair Credit Reporting Act. This federal law mandates that employers secure the express, written consent of the applicant prior to conducting a background check for employment purposes. Before an employer takes an adverse action and refuses to hire an applicant on the basis of information contained in a consumer report, the employer must provide the applicant with notice and a copy of the applicant's report, and a summary of the applicant's rights under the

Fair Credit Reporting Act. After an employer engages in an adverse action (i.e., refuses to hire the applicant), the applicant must be given an "adverse action notice." This document must contain the name, address, and phone number of the employment screening company, a statement that this company did not make the adverse decision, (the employer did), and a notice that the applicant has the right to dispute the accuracy or completeness of any of the information in the report.

Online searches of social networking communities involve no explicit consent from the applicant. If an employer ultimately rejects an applicant due to content on his or her user profile, the applicant is also denied his or her opportunity under the law to respond to any adverse findings by the employer or to obtain a copy of the background check itself and learn about the negative information it contains.

4)   First Amendment

One of the easiest ways to understand how the First Amendment is implicated in the realm of social networking and employment is by looking at recent case law.

In *Spanierman v. Hughes,* 576 F.Supp.2d 292 (D. Conn. 2008), a non-tenured high school teacher originally used MySpace because students asked him to look their MySpace pages. He then created a number of MySpace profiles. He claimed he used the website to communicate with students and relate to them better. A guidance counselor looked at one of his profiles and found pictures of naked men and inappropriate comments. His students were communicating with him at this profile. The conversations were "peer-to-peer" like. He was asked to remove that profile, but created another, very similar profile, and again, students complained. Following a meeting with the DOE, he was notified that his contract would not be renewed. As a result, he brought an action under §1983, alleging violations of his 14[tth] Amendment rights to procedural due process, and equal protection. He also alleged that the Defendants violated his First Amendment rights to freedom of speech and freedom of association.

The court in *Spanierman* held that the teacher's interest in the renewal of his teaching contract was not a protected property interest under the due process clause, that non-renewal of his contract, by itself, was insufficient to support a substantive due process claim, and that he failed to compare himself to a similarly situated employee, as required on his selective prosecution equal protection claim. Additionally, the court held that he failed to demonstrate causation between protected speech and the adverse employment action, as required on a First Amendment retaliation claim. The court also found that he failed to demonstrate causation between protected association and adverse employment action, as required on First Amendment retaliation claim.

In *Snyder v. Millersville University*, 2008 WL 5093140 (E.D.Pa),[45] Snyder was a student teacher who attended Millersville University. She completed various field assignments at area schools and anticipated that upon completing her student teaching practicum, she would receive a BSE. However, she communicated with students though her MySpace page, against written policy and against warnings. She publicly addressed the issue on her MySpace page, and wrote "Bree said that one of my students was on here looking at my page, which is fine. I have nothing to hide. I am over 21, and I don't say anything that will hurt me (in the long run). Plus, I don't think they would stoop that low as to mess with my future. So bring on the love! I figure a couple of students will actually send me a

message when I am no longer a teacher…." She also posted a photograph of her wearing a pirate hat and holding a plastic cup with a caption that read "drunken pirate." She was not allowed to complete the practicum and was denied a BSE degree. She filed under 1983, claiming violation of her First Amendment right to free expression.

The court in *Snyder* held that her First Amendment free speech rights were not violated when the teaching program failed to certify her. Because of her status as a teacher, she was subject to freedom of speech that touched on public concern. Her website posting was not speech that touched on matters of public concern, but rather the posting was only related to personal matters

So What Can or Should Employers Do?

Before relying on social networking websites in making hiring decisions, employers should always:

- Make sure applicants receive notice and sign release/waiver forms before background checks are conducted.
- Request references from all applicants and contact those references to assess the applicant's job qualifications and verify the information supplied by the applicant on his or her resume or during the interview.
- Verify an applicant's educational and professional credentials by contacting schools and universities listed on the applicant's resume or contacting licensure boards to confirm an applicant's professional licenses held.
- Be consistent in their hiring practices. Make sure there is a legitimate business rationale for rejecting an applicant and that hiring decisions are not motivated (even unconsciously) by information in an applicant's user profile that reveals membership in a protected class. Obviously, if an applicant's profile contains evidence of grossly inappropriate or unprofessional conduct (i.e., the applicant admits that he or she lied during an interview or reveals confidential information of a former employer), the employer has (and can point to) a legitimate reason for rejecting the applicant.
- Document everything. Be prepared to justify hiring decisions and use documentation to support that justification.
- Be cognizant of the Terms of Use or User Agreements which govern the use of social networking websites.
- Contact legal counsel if unsure about making a particular hiring decision or if further advice is needed because an applicant's online profile reveals questionable content. Avoid being made into an example by an applicant seeking legal recourse by alleging hiring practices are discriminatory or violative of an applicant's privacy rights.

Additional Thoughts:

Unless there is an overriding business purpose that necessitates the use of Twitter or other social networking sites, employers can consider disallowing it for business purposes.[46]

Policies and procedures should be implemented that help to insure that information which would never be asked in a job interview is not made available in a back door manner to individuals involved

in hiring.

Employers should affirmatively inform applicants of their practice of conducting online background checks, and should obtain signed documentation of this fact.

Training should be provided to anyone involved in the hiring and supervision of employees so that a company's entire managerial workforce understands the potential risks of information learned through an innocent Google search.

Companies may need to survey employee communication practices periodically and may need to conduct training or information campaigns regarding what social networking practices will be supported and which will be considered unacceptable.

System monitoring may be required to confirm that employees use corporate communications systems in conformity with established policies. In certain circumstances, the company may consider specifying the misuse of corporate communication systems (or private communication systems while on company time or in connection with corporate business) will be considered grounds for termination of employment.[47]

At a minimum, employers who decide to use social networking sites as part of their background checks should have a written policy outlining what kind of information may be collected and how it is considered when making employment decisions, including who will be conducting the check, that it will not use false information to access a site, and will not use the information from such sites in a discriminatory manner or otherwise prohibited by law.[48]

One employer has gone so far as to ban the use of social networking sites all together in the hiring process. About a year ago, the CEO of Amegy Bank of Texas, Paul B. Murphy Jr, was concerned about whether the bank's human resources department could, or even should, access social networking sites in the course of the hiring process. He was aware of the risks in accessing information through the networks and he was also aware that the current economic climate makes employment litigation particularly attractive. The CEO, the Senior VP and human resources director, and the bank's labor and employment lawyer, developed a policy to be followed by anyone connected with the bank. In short, the policy says that social networking sites are strictly off limits. Additionally, the bank's internet system blocks all access to social networking sites, including access by the employees in the HR department.[49]

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Carolyn Dillenbeck, a former student intern at MBJ, prepared this alert under Mike's supervision.

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purposes only and you should consult an attorney concerning any specific legal questions you may have.

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[1] This article is an update of a January 17, 2007 article by Jennifer M. Bombard, Esq.: http://www.morganbrown.com/docs/MySpace%20Article-Client%20Alert.pdf.

[2] CareerBuilder.com is not the only place for data on this topic. For example, a 2007 Survey by the National Association of Colleges and Employers ("NACE") estimated that one in ten employers responding to a survey about the job outlook for new graduates planned to review profiles on social networking sites. Of those employers, sixty percent responded that the information they find online has some effect on hiring decisions. Karen R. Glickstein, *Social Networking and Employment Law,* found at: http://www.stklaw.com/files/upload/socialnetworkingpaper.pdf, last accessed: April 22, 2009. Nearly 17 percent of employers responding to NACE's *Job Outlook 2008* survey reported plans to use social networking sites as part of their recruiting effort.

[3] One-in-Five Employers Use Social Networking Sites to Research Job Candidates, CareerBuilder.com Survey Finds, September 10, 2008, found at http://www.careerbuilder.com/share/aboutus/pressreleasesdetail.aspx?id=pr459&sd=9%2f10%2f2008&ed=12%2f31%2f2008, last accessed May 13, 2009.

[4] *Id.*

[5] *Id.* Top areas for concern among these hiring managers included information about them drinking or using drugs, provocative or inappropriate photographs or information, poor communication skills, negative comments about previous employer or employee, discriminatory remarks related to race, gender, religion, etc., unprofessional screen names, and links to criminal behavior.

[6] *Id.* Top factors that influenced their hiring decision included: the candidate's background supported their qualifications for the job, the candidate had great communication skills, the candidate was a good fit for the company's culture, the candidate's site conveyed a professional image, and the candidate had great references posted about them by others.

[7] *Future Bosses Now Snooping on Facebook,* www.vault.com

[8] Amanda Lenhart, Pew Internet Project Data Memo, January 14, 2009, found at: http://www.pewinternet.org/Reports/2009/Adults-and-Social-Network-Websites.aspx

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] Social Networking Sites Gaining Popularity Among Employers Seeking Job Candidates, March 07, 2008, found at http://www.jobweb.com/jobmarketnews.aspx?id=1693, last accessed May 13, 2009.

[13] According to a 2007 www.vault.com survey, 39% of employers look at current employee profiles.

[14] *MySpace* gains top ranking of US web sites," *Reuters*, at http://today.reuters.com/news/, Jul. 11, 2006.

[15] Sellers, Patricia. "*MySpace* Cowboys," CNN, at http://money.cnn.com/magainzes.fortune/fortune_archive/2006/09/04/8384727/index.htm, Aug. 24, 2006.

[16] http://www.techcrunch.com/2009/01/22/facebook-now-nearly-twice-the-size-of-myspace-worldwide/ see also: 962 PLI/Pat 657, 661-663 (2009), citing http://www.web-strategist.com/blog/2008/01/009/social-network-stats-facebook-myspace-reunionjan2008/.

[17] http://www.facebook.com/press/info.php?statistics

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[19] www.sampadswain.com/2009/02/statistics-facebook-bypasses-myspace-and-twitter-stronger-than-ever

[20] http://www.employmentdigest.net/2009/01/twitter-your-way-to-a-new-job/

[21] Lee S. Rosen, *Are you Antisocial*, 31 Fam. Advoc. 6, (Fall 2008).

[22] *Id.*

[23] 962 PLI/Pat 657, 661-663 (2009), citing http://blog.compete.com/2008/05/15/twitter-traffic-growth -usage-demographics/

[24] www.sampadswain.com/2009/02/statistics-facebook-bypasses-myspace-and-twitter-stronger-than-ever

[25] Janet Ellen Raasch, *Linked In or Left Out: 'Supercharge' Your Interactions Through Social Networking*, found at http://www.cba.org/cba/practicelink/TAYP/socnetworks2.aspx, last accessed: April 23, 2009.

[26] Robert Ambrogi, Part One of Two: Social Networking Sites For Lawyers, 65 JUL Bench & B. Minn. 16, July 2008.

[27] *Id.*

[28] *Id.*

[29] Steven C. Bennett, *Look Who's Talking*, 81 May N.Y. St. B.J. 10, 12 (May 2009).

[30] Carly Brandenburg, *The Newest Way to Screen Job Applicants: A Social Networker's Nightmare*, 60 Fed. Comm. L.J. 597 at 602 (2008).

[31] *Id.*

[32] *Id*. [citations omitted]

[33] Facebook Gets Guy Dressed As Fairy Bagged By Boss, found at: http://cbs11tv.com/watercooler/facebook.fired.Kevin.2.567620.html.

[34] Karen R. Glickstein, *Social Networking and Employment Law*, found at http://www.stklaw.com/files/upload/socialnetworkingpaper.pdf, last accessed: April 22, 2009.

[35] Les Rosen, C*aution! – Using Search Engines, MySpace or Facebook for Hiring Decisions May Be Hazardous to Your Business*. *January 29, 2009. Located at **http://www.esrcheck.com/wordpress/?p=311***, last accessed April 22, 2009.*

[36] Les Rosen, C*aution! – Using Search Engines, MySpace or Facebook for Hiring Decisions May Be Hazardous to Your Business*. *January 29, 2009. Located at **http://www.esrcheck.com/wordpress/?p=311***, last accessed April 22, 2009.*

[37] *See* M.G.L. c. 151B, § 4; 804 C.M.R. 3.01 *et seq.*

[38] *Massachusetts Commission Against Discrimination Preemployment Inquiries Fact Sheet*, at

http://www.mass.gov/mcad/preemployfactsht.html.

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