The Pros and Cons of Using Social Media in Vetting Job Applicants

By Maureen De Armond

Every HR professional knows the enduring headache that can accompany a bad hire. Unquestionably, vetting job applicants is a critical component of the decision-making process intended to prevent such headaches. But applicant vetting can be easier said than done, and there are many more ways to do it poorly (or even disastrously) than to do it well.

In today's society, the internet has become a tempting avenue for applicant vetting. While much has been written about the legal risks of Googling job applicants, it remains a tool many organizations use — often without taking appropriate steps to manage the risks and maximize the potential rewards. Here, we'll explore some of these risks and rewards.

Don't Do It

Imagine you're looking through a fresh batch of job applications, and one catches your eye. The listed home address happens to be only a few blocks from your own house. You start thinking … maybe just a quick drive by the residence would be insightful — you can see if the person's lawn is neatly mowed, if the car in the driveway is clean, if the house is in good condition. Maybe these observations will give you some insight into whether the applicant is a responsible citizen. And why not just drive by? It's convenient, it doesn't cost anything, it'll only take a minute, and no one will know.

Pause for reflection: Sounds a bit creepy, no? So my question is this: Is Googling that applicant really all that different from such a drive-by?

Let's say you do drive by the address on the application, and you see that the house is in good condition, the lawn is perfect, and the gutters appear to be leaf-free. But you also see a wheelchair ramp, a Breast Cancer Survivor bumper sticker on the car in the driveway, and a rainbow flag on the front porch.

Pause for reflection: While you certainly didn't go to the house looking for bumper stickers, gay pride flags or wheelchair ramps, you saw what you saw, and have likely drawn some conclusions about the applicant based on these observations. Is there any way for you to now un-see these displays?

When it comes to an applicant's membership in a protected class, employers are in a better place if they simply do not know. You're better off being able to say you didn't know an applicant was a member of a protected class than to argue that you knew, but that the knowledge didn't impact your decision making.

Hopefully, we can all agree that the drive-by is an ill-advised idea. Would it be an equally bad idea to Google the same applicant? Might you find the same types of information shared on their Facebook account, Twitter feed, LinkedIn profile or personal blog?

A preliminary question should always be, "Is there legal guidance on the topic?" One of the first places to look for such guidance is the Equal Employment Opportunity Commission (EEOC). In a 2014 meeting examining the use of social media in the hiring process, the EEOC acknowledged that "the use of sites such as LinkedIn and Facebook can provide a valuable tool for identifying good

candidates by searching for specific qualifications," but also noted that "the improper use of information obtained from such sites may be discriminatory since most individuals' race, gender, general age and possibly ethnicity can be discerned from information on these sites." Unfortunately, to date, the EEOC has not offered any detailed guidance; however, employers should heed its broad warnings about potential discriminatory risks.

In the absence of federal guidance, we must turn to research and high-profile cases — and recent research supports the premise that employers will indeed discriminate against applicants when put on notice about certain protected classes. A recent Carnegie Mellon study created dummy resumes and social media profiles for real job openings and tested whether hiring decisions might be swayed by social media profiles showing applicants were homosexual versus heterosexual, Republican versus Democrat and Christian versus Muslim — and bias was indeed detected, with the study finding "robust evidence of discrimination" among certain types of employers. (For more on this study, see the paper "An Experiment in Hiring Discrimination Via Online Social Networks" by Acquisti and Fong.)

A similar study was conducted by Syracuse and Rutgers, but focusing on applicants with disabilities. This study also found bias. In fact, the researchers stated they were "astounded" by the degree of disinterest in applicants who had disclosed disabilities. (For more on this study, see the paper "The Disability Employment Puzzle: A Field Experiment on Employer Hiring Behavior" by Ameri, Schur, Adya, Bentley, McKay and Kruse.)

And what if you adopt a practice of screening online information and you find nothing about a candidate at all? Should the absence of information count against a candidate? The Pew Research Center in two separate studies found that certain protected classes are less likely to be online — including people with disabilities and Latinos. Thus, lowering an applicant's "score" based on the absence of an online presence could have a disparate impact on these groups.

Aside from unlawful discrimination, there are other risks of reviewing online postings and comments of applicants. What if the employer is arbitrarily influenced by topics unrelated to protected class status (and equally unrelated to the person's qualifications to do the job), such as their sense of humor, their favorite sports team, their thoughts on

global warming or free trade? It would be unfortunate to let subtle (even if not unlawful) biases influence the vetting of candidates. Further, the internet could be providing you with incorrect or misleading information. Think back to the drive-by scenario — imagine that you misread the address on the application and drove by the wrong house? You believed you learned all kinds of "things" about the applicant, but it was a neighbor's house, not the applicant's. The same can happen on the internet. What if you are taking into consideration the online materials about the wrong John Smith? The information could also easily be inaccurate, dated or posted in jest. In other words, you could be drawing meaningless — and unfair — conclusions about an otherwise viable applicant.

Do It

Now that we've made the case for not vetting applicants on the internet, let's look at the flip side. Undeniably, there can be important, relevant and compelling information about an applicant online. As we vet applicants (particularly finalists in the closing steps of the process), we need to exercise due diligence when checking into their character, background and credentials.

Colleges and universities support many high-profile positions, and we all know if there is a newly hired president, dean of students, football coach, etc., the media, many alumni, students, faculty and staff, and members of the community may be Googling that new hire — and they should not be discovering things about the new hire that are not already known to those directly involved in the hiring process.

Pause for reflection: Do educated professionals really post outrageous comments on publicly accessible websites, and should that information be fair game in assessing professionalism?

You bet they do, and it most certainly is fair game. Take the example of Geoffrey Miller, an evolutionary psychology professor at the University of New Mexico who was serving as a visiting professor at the NYU Stern Business School in 2013 when he posted a fat-shaming tweet reading: "Dear obese Ph.D. applicant: If you don't have the willpower to stop eating carbs, you won't have the willpower to do a dissertation. #truth."

Or, take the Facebook posts of Gloria Gadsden, a sociology professor at East Stroudsburg University who wrote in 2010: "Does anyone know where to find a very discreet hitman? Yes, it's been that kind of day …" and then posted

again a month later: "Had a good day today, didn't want to kill even one student [smiley face emoticon] … now Friday was a different story."

Pause for reflection: Would you want to hire a Dr. Miller or a Dr. Gadsden at your institution? Are you confident your current vetting processes would catch these types of attitudes?

What other kinds of information might you find online about an applicant that could be beneficial to know up front? Some examples include:

- Discriminatory comments and comments that do not reflect your institutional values (such as blatantly sexist, racist or homophobic views);

- Posts and photographs admitting to criminal behavior;

- Inappropriate disclosures of confidential information (information protected by FERPA or HIPAA, or personnel information);

- Illustrations of incompetence, dishonesty, a poor work ethic or poor judgment; and

- Inconsistent or contradictory information about job history, education, publications, etc.

No one wants to make a bad hire. Missing publicly accessible information — especially of the outrageous and inflammatory nature — seems sloppy in our modern digital age. We also don't want to be caught by surprise or confronted with information by the media, angry donors, unhappy alumni or disappointed students.

With the risks and possible rewards in mind, how should one proceed?

A Spectrum of Options

For institutions that have not yet adopted a process or philosophy for using online information in vetting job candidates, there are at least four viable courses of action.

The Wild West

The first option is to have no policy regarding online vetting. One might also refer to this option as the Wild West. Maybe you simply have more burning issues to address, and this topic has not yet created any measurable problems at your institution. You may have confidence that the key people involved in vetting candidates simply know better than to Google candidates. But, understand that people will Google. These people will include members of

the search committee (if there is one); coworkers (particularly after meeting finalists); and, for high-profile positions specifically, the media, alumni, donors, students, and faculty and staff. For high-profile positions where names are published, finalists may even Google other finalists. If you are not doing the same, these groups of interested individuals may see and know (or think they know) more about your finalists than you do.

Think about the highly publicized handling of Steven Salaita's inflammatory tweets taken into consideration after the University of Illinois had already offered him a position. In that situation, a local newspaper printed several of Dr. Salaita's anti-Israel tweets, which resulted in the Simon Wiesenthal Center contacting the university. Additional complaints quickly poured in, including complaints from many donors. The job offer was rescinded and a very long, very public and very costly legal battle ensued.

Pause for reflection: Had the University of Illinois reviewed and taken into consideration the public and numerous tweets during its vetting process, would the university have offered Dr. Salaita the position in the first place? It is impossible to know, but at least it would have had a process to rely on to justify why the tweets were or were not taken into account during the vetting process.

Ban the Practice of Online Vetting
A second option is to "ban" the practice of Googling candidates. Inform those involved in search processes that your institution has weighed the pros and cons and has decided that this is not a reliable, time-efficient or effective way to vet candidates. If your policy is to ban online vetting, then you may discipline anyone involved in the searches who violates this position.

One of the drawbacks: people will still Google candidates, despite a ban. Certainly those high-profile finalists will still be cyberstalked by interested parties. Another downside: you could miss out on information that could be relevant and helpful in making final decisions.

Screen All Applicants
A third option sits at the other end of the spectrum — screen everyone. Adopt an online search process that applies to all positions. You could develop varying degrees of intrusiveness — a third-shift custodian (while still an important position at a college or university) does not likely need the same amount of time and scrutiny as, say, your

new director of government relations or your head football coach. With such a policy, applicants should be informed and have an opportunity to offer an explanation if there is anything potentially harmful (as you may offer with a candidate who has had a prior criminal conviction or has previously been terminated).

One drawback of vetting everyone: this is not efficient in regards to time or money. If you have the capacity to add this step to your vetting process, consider instead conducting more in-depth interviews and calling more references.

> **To the extent possible, searching online for information about job finalists should be consistent, not just a wild goose chase.**

Only Vet Applicants for Certain Positions
The final option is to vet only designated positions, possibly based on some combination of pay grade, job duties and/or visibility of the position. Analogous to credit checks, this part of the background check process would only be utilized with select positions.

However, you would need to think carefully about where you draw the line — these decisions would need to be made at the institutional level, and after discussions with the appropriate stakeholders. Would the provost support checking all faculty, lecturers and adjuncts? What about visiting professors? Would the athletic director support a check of all athletic department staff, even those with low-paying jobs and positions not likely to be in the spotlight? Maybe — but how can you know if you don't have the conversation first?

In short, such an approach has some clear advantages, but there would need to be substantial discussion to get to the point where the lines could be drawn based on consensus. Despite the apparent advantages, one drawback could be that you may miss some outrageous online conduct by non-selected positions.

Building a Process or Policy
If you do decide to move forward with a policy or written guidance on how your institution may use online information to vet applicants, here are some key components you should take into account:

Provide Training on Your Online Vetting Policy

Creating a policy isn't enough — those involved in the search process must also be trained on the policy. It would be wise to assure that anyone directly involved in a search signs off on receipt and understanding of the policy.

Be Transparent

Be sure that your online vetting process is transparent, not only to the hiring unit and the people involved in the search, but also to the applicants — as they should understand by what standards they are being assessed and judged.

When your university makes a high-profile hire, you can be sure the media, alumni, students, faculty and staff, and members of the community are Googling that person — and they should not be discovering things not already known to those directly involved in the hiring process.

Be Able to Explain the "Why"

You must be able to articulate (via a policy or conversation) how and why you are assessing and reviewing online information. Be prepared to answer questions from candidates regarding why online vetting is important or relevant to their application for the position. If you cannot defend your practices, you may need to reconsider adopting them.

Consider Timing

Consider the importance of timing in two key ways: 1) when to inform the applicants and those involved in the search process that online vetting will be taking place, and 2) when to conduct the online vetting. Applicants and people involved in searches should know from the very start what your process is. However, online vetting of applicants should not be conducted until you have already met with finalists. This is recommended by the EEOC, as you will likely already be aware of some protected class status after you have met the candidate in person (e.g., gender, visible disabilities, visible pregnancy, some presumption about race, etc.). This helps limit some of the potential legal risks associated with learning "too much" by reviewing online information.

Assign the Online Vetting to an Objective and Neutral Third Party

Who will conduct the applicant vetting? If you want maximum protection, engage a third-party vendor and set search parameters for them. Alternatively, have someone not employed by the hiring unit and not involved in the hiring process conduct the online search. Or perhaps someone in HR conducts the searches.

Standardize the Online Vetting Process

To the extent possible, searching for information about finalists should be consistent, not just a wild goose chase. Are you checking certain sites? LinkedIn, Google Scholars? If you search, each search should be similar. As with other aspects of the vetting process, all finalists should be treated in a similar fashion.

Appropriately Weight the Findings

What do you do with the findings? Keeping in mind the Pew Research Center's studies discussed above, online content should not add value to a candidate's application. You should only be screening out based on substantiated and substantial red flags. If you find red flags, do you offer the finalist the opportunity to explain? Would you do the same for a finding during a criminal background check? Consider taking similar positions. You don't want to rely on inaccurate information — what if the red flag is associated with a different John Smith? It wouldn't be fair to the candidate if he or she were screened out of consideration based on your assessment of a different person with the same name.

Document Your Process

As with any other facet in your hiring and vetting process, you should properly document what you did, when, why and the steps you took as a result thereof. You should also periodically assess whether your online vetting process is adding value to your organization's search process.

A Thoughtful Approach

As an HR professional, consider the need for fostering a thoughtful and measured discussion about what makes the most sense for your institution when it comes to the online vetting of applicants. Remember to seek legal counsel and take into account any relevant state laws. Appropriately addressing the risks and potential rewards of online vetting will take time, effort and much discussion, but such a thoughtful and strategic approach is necessary to ensure the fair, consistent and lawful treatment of your job applicants.

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Pros and Cons of Various Approaches to Online Vetting of Job Applicants

The Wild West	Complete Ban	Screen Everyone	Screen Select Few
Con: No policy or guidance	Pro: Clear policy	Pro: Clear policy	Pro: Policy adopted (but may be subject to some interpretation)
Con: No regulated consistency between searches, candidates, positions	Pro: Appearance of consistency — everyone is treated the same	Pro: Consistent standard — everyone is treated the same	Pro: Consistent standard (but still subject to some interpretation)
Con: Greatest legal risks	Con: Despite ban, candidates will still likely be Googled	Con: Not efficient in regards to time or money	Con: Potential lack of clarity of applicability
Con: Greatest risk for unfair and inconsistent treatment of applicants	Con: Risk for missing important information	Con: Overly intrusive	Con: Perhaps no screening of positions where information would have been helpful

Want to learn more about the role social media should and shouldn't play in the vetting of job applicants? View CUPA-HR's free, on-demand webinar "Social Media, Cyberstalking and the Hiring Process" to hear about the established legal risks of searching online for information on job applicants, real-life examples of candidate cyberstalking gone bad and recent academic research on this ever-evolving topic.

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