

Social Media, Employment, and Civil Rights

Lori Anthony, Chief, Civil Rights Section
Office of Ohio Attorney General Mike DeWine



MIKE DEWINE

== ★ OHIO ATTORNEY GENERAL ★ ==

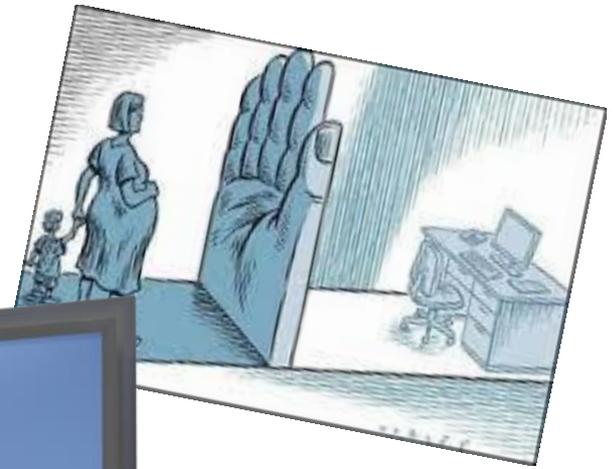
Social Media and Recruiting

- 65% of companies polled found new hires via social media.
- 87% said it was important to be on LinkedIn.
- “Keep public content professional.”

-Society for Human Resource Management Survey,

The Importance of Social Media for Recruiters and Job Seekers (Sept. 2015)





Ohio's Fair Employment Laws

It is unlawful to **hire, promote, discipline, or terminate employment** based on

race

disability

color

age

religion

ancestry

sex

military status

national origin

protected activity

- Ohio Revised Code Chapter 4112.02(A) and (I).



Federal Fair Employment Laws

There are several **federal** employment-related civil rights laws to keep in mind:

Title VII

ADEA

GINA

ADA

*These statutes apply to all terms and conditions of employment.

Social Media and Recruiting

Consider –

- Qualifications of ideal applicant
- What site(s) are most visible, reliable, accessible, secure
- Online exclusively or in addition to other media
- Multiple hires for different jobs or single/rare vacancy

Recruiting – Best Practices

- Use traditional means of recruiting, in addition to any social media.
- Offer application options to those who may not have access to a computer or may need an accommodation to complete an application.
- Notify the applicants that social media and other internet information will be screened.



Recruiting

Be careful what you ask...

Date of birth/Graduation dates

Race

“Are you disabled?”

“Are you a U.S. Citizen?”

Criminal record



Social Media and Hiring

“Who should we interview? Let’s check their social media posts...”





Coeexist

“status update: **FINALLY PREGNANT!!!**”



www.clipartof.com · 1311961

Hiring

- In addition to helpful information about an applicant's background and, potentially, their character, social media often provides information that cannot be considered during the hiring process.
- Screener must ensure that the hiring process is not tainted by impermissible bias.

Social Media and Hiring – Best Practices

- Delay social media search until you meet applicant face to face.
- Do not ask for passwords.
- Think of it as another face to face interview.

Social Media and Hiring – Best Practices

- Focus on qualifications and experience.
- Decision-maker should not do screening.
- Screener should have objective and consistent criteria.

Violence

Illegal drug use or other criminal activity

Discrimination complaints or other protected activity may not be considered



Social Media and Hiring – Best Practices

- Be reasonably certain info is from the applicant.
- Do not “like”, “comment”, “friend” or “follow” an applicant.
- Do not create dummy accounts.
- Stick to public areas of the sites.

Social Media and Discipline – when is it ok?

Calling in “sick”

Negative comments about employer or customers

Racial or profane jokes

“Liking” various sites, posts by others

#ihatemyjob

Pictures with alcohol



Social Media and Discipline

Be mindful of –

First Amendment concerns

Protected concerted activity

Retaliation

...Do you have a social media policy?



Protected concerted activity

Occurs when social media is used for dialogue and to share concerns about important terms and conditions of employment.



Protected concerted activity

- Engaged in, with or on the authority of other employees and not solely by and on behalf of the employee himself.
- Link between employee and coworkers, and the action is on behalf of the employee to achieve common goals.
 - Lone employee intends to induce group activity.
 - Employee acts as a representative of at least one other employee.



Protected concerted activity

- Criticism of managers can be protected, including name calling.
- Balance the impact on the company versus the importance of protecting concerted speech and activity.

<https://www.nlr.gov/rights-we-protect/protected-concerted-activity>

First Amendment

In order for First Amendment protection to attach –

- issue of public concern,
- speech must outweigh the legitimate interest in efficient public service,
- speech must have been one of the deciding factors in the employment decision. Would the employment action have occurred regardless of the protected conduct?



First Amendment

- Is the person speaking as a citizen or as an employee?
- Must involve an issue of political, social or other concern to the community.
- Personal gripes typically are not protected speech.

Discrimination, harassment and retaliation

Social media use by employees to discriminate, harass or retaliate against their coworkers.

Treat these allegations the same way you would treat any other allegations of such behavior.

- Conduct an investigation.
- Take action where appropriate.



Retaliation

It is unlawful for an employer to discriminate against an employee because the employee

- **opposed** any unlawful discriminatory act
- OR
- **complained** about unlawful discrimination, **testified**, **assisted**, or **participated** in an investigation, hearing, or proceeding related to an allegation of discrimination.

- Ohio Revised Code 4112.02(I)

Social Media and Discipline – Best Practices

Consider a policy -

Be clear

Avoid overly broad statements

Use definitions

Dovetail with any other work policies

Preserve protected activity

Be consistent in enforcement





- Only elicit information about an applicant's qualifications and work experience.
- Post-interview search of social media, with objective criteria, by someone other than decision-maker.
- Respect free speech and privacy; act on inappropriate, public postings.



Talk to your attorney - first.





Free Fair Employment Trainings

Email lori.anthony@ohioattorneygeneral.gov

or civilrightstraining@ohioattorneygeneral.gov

or call 614.466.7900.





How to contact us

Civil Rights Section
30 East Broad Street, 15th Floor
Columbus, Ohio 43215



MIKE DEWINE

OHIO ATTORNEY GENERAL

www.OhioAttorneyGeneral.gov