

The Ethics of Pre-Employment Screening Through the Use of the Internet

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Introduction

A growing trend in the business world today is to use internet search engines and social networking sites to screen job applicants. Employers are often responsible for the actions of their employees and want to know as much information as possible about their employees before investing the time and money required to incorporate them into their respective businesses. With “nearly 50% of resumes [containing] factual errors,”¹ it is understandable why employers are erring to the side of caution. In addition, “employee theft and fraud cost US retail businesses more than \$50 billion annually [and] the Bureau of Labor Statistics estimates that 1.2 million to 2 million incidents of work place violence occur each year.”¹ According to Joseph Vater, a partner at the law firm of Meyer, Unkovic & Scott LLP, negligent hiring lawsuits against companies whose employees commit a violent act have been on the rise.² This has increased the necessity for employers to perform background checks on job applicants, and many companies have turned to the internet to find all available information on their prospective employees.² However, while it is important for companies to know who they are hiring, it is unethical to rely on information found on the internet in making hiring decisions.

Background

Traditional background searches generally focus on resume accuracy, criminal history, credit history, drug screening, educational backgrounds, driving records, and reference verification. In 2000, 86% of employers performing background checks did so in order to verify employment history. Criminal records were sought 81% of the time, drug screening 78% of the time, and reference checks were performed by 71% of employers performing background checks.³ As a result of the Fair Credit Reporting Act

("FCRA"), accessing this information requires notification and permission of the applicant in question.⁴ Although this information can be found on the internet, the focus of social networking and internet searches generally does not focus on this information.

Social Networking Websites

Recent surveys have indicated 26% of hiring managers have used internet search engines to research prospective employees, while 12% say they have used social networking sites.⁵ One common site used in these searches is Facebook.com. Facebook is a social networking site originally limited to use by the college community, but more recently open to the public at large. Founded in 2004, the site "now has over 19 million registered users across over 47,000 regional, work-related, collegiate and high school networks."⁶ While Facebook has many different controls allowing users to limit and/or block the viewing of their individual profiles, many users have not taken advantage of these controls leaving them vulnerable to searches performed by curious employers. Additionally, studies are currently being conducted to determine the judgments made regarding those individuals who do use current privacy controls to restrict access to their profiles. These studies hypothesize that blocked accounts create the impression that the individual has something to hide, and as such may result in the same judgments that will be argued as unethical later in following sections. As the sixth-most trafficked site in the United States, Facebook is one of the primary networking sites used for pre-employment screening. MySpace.com is similar in use, but to date has been far more widely used. In fact, "MySpace has become the most popular social networking site in the world, with more than 95 million members."⁷ Privacy controls are also available on MySpace, but similar to Facebook, the controls are not used by all members. One of the main differences between MySpace and Facebook is the ability of the user to personalize the appearance of their profile on MySpace. Both MySpace and Facebook generally have areas for personal information such as age, religion, and relationship status; information that the FCRA prohibits from being used in making hiring decisions. Additionally, both sites allow the uploading of personal pictures and videos that can be shared with a select group of people (generally those accepted as friends), or with the public as a whole. Registered users on both sites also have the ability to join groups, which range in topic

from support of a particular sports team, political issue, or hobbies the person may be interested in. An employer searching an unrestricted profile has access to all of this information and can use it to decide which candidates to interview and/or hire.

Google

Another increasingly used practice for employment prescreening is to “Google” applicants. This term refers to searching for a person’s name on the popular search engine Google.com. Information found through this search can vary greatly, but can include achievements, newspaper references, group affiliations, and legal proceedings that include the name of the individual being searched. However, searches of individuals with common names may result in many results unrelated to the individual in question. Yet, by searching in a general location, employers may be able to find information relevant to the specific applicant. While this practice may reveal information about a potential employee, there is no guarantee the information found is factual or related to the individual being searched.

Consequences of Internet Searches

Over half of the applicants found on search engines and nearly two-thirds of the applicants found on social networking sites were not hired as a result of the information found on sites, such as Facebook.com, MySpace.com, and Google.com.⁵ Among other concerns, these sites are not necessarily valid nor is there any way to ascertain the true identity of the person responsible for the information found. Unlike the interview process, there is no personal connection when sifting through information found on the internet and therefore there is a greater likelihood for the information to be taken out of context or misused. In many cases, the information used to determine the suitability of a prospective employee had little or no bearing on their ability to adequately complete the work. In fact, 8% of the potential employees that were rejected as a result of information found on search engines and networking sites were rejected because their screen name was unprofessional.⁵ As information on the internet is generally considered public, permission for these searches is not required and the information found need not be

disclosed. As a result, unverified information can sway a future employer's decision without any input from the employee in question.

Fairness

The ethical dilemma that arises as a result of these searches is one of fairness. According to the Markkula Center for Applied Ethics, the fairness and justice approach to ethics stems from "Aristotle and other Greek philosophers [who] have contributed the idea that all equals should be treated equally."⁸ This approach states that "ethical actions treat all human beings equally – or if unequally, then fairly based on some standard that is defensible."⁸ People generally assume that they have a certain degree of informational privacy, yet the information accessed on the internet is not restricted in a way that would protect this sense of privacy. While rules exist to prevent employers from asking questions about belief systems or disabilities of their prospective employees, these rules fail to prevent the same information from being divulged through internet searches. These laws are intended to prevent discrimination on the basis of information irrelevant to the job. By circumventing these laws, the information used to make hiring decisions may unfairly discriminate against people with certain beliefs or backgrounds. The lack of these laws in regards to their application to the information found on the internet may lead to discrimination, whether done on a conscious or unconscious level. Although a lack of litigation may make the use of the internet for pre-employment screening either, legislation is not the goal of this paper. Ultimately it is up to the employers to decide the ethical course of action. Ethically employers should rely solely on information that is relevant, fully disclosed the applicant, and received from a reliable source to make hiring decisions.

Employer Liability

Many companies feel that these searches are necessary to protect their reputation, assets, and investment in new employees. A company can be sued for an employees' criminal act if "they fail to use reasonable care and they hire someone that they either knew or should have known presented a foreseeable risk of harm to a third party."⁹ Internet background checks may satisfy the reasonable care standard allowing a company

to avoid this sort of liability. However, other forms of background checks may also fulfill this standard while avoiding the ethical problems internet searches pose. The FCRA requires consent and disclosure of information found in criminal background checks, credit checks, medical records, and educational background.⁴ This does not necessarily solve all the ethical concerns about using such information, but it does give potential employees a chance to control or explain the information used in judging their compatibility with a given company. Additionally, background checks protected by the FCRA require documentation. As such, discrimination may be more easily determined as the information used to determine employment can be traced to source documents that require applicant consent. Furthermore, this documentation could be used as evidence of exercised due diligence in court if a negligent hiring lawsuit was filed against a company. Moreover, hiring managers should note that “recent research strongly indicates that the structured interview format yields significant increases in both reliability and validity.”¹⁰ These interviews can take one of two forms: behavioral interviews, which work on the belief that future behavior is best predicted by examining past behavior; and situational interviews, which operate under the assumption that intentions predict behavior.¹⁰ By using interviews to screen prospective employees, companies can avoid many ethical concerns that arise through background and internet searches.

As employers increasingly turn to the internet to research prospective employees, the ethical implications become more relevant and far reaching. Recent surveys report that over one-quarter of the hiring managers questioned take into account information found on the internet when making hiring decisions.⁵ The problem is that information found on the internet is not entirely factual. Even factual information on the internet can be taken out of context and relying on it can lead a person to make false conclusions. It is unfair and unethical to base hiring decisions on false or irrelevant information. Therefore, using the internet to conduct pre-employment screening is unethical on the basis of fairness.

Conclusion

Discrimination is nearly universally accepted as unethical, whether done on a conscious or unconscious level. By prejudging a person’s ability to perform a given task

based on incorrect or irrelevant information, people may be rejected from jobs they would be very successful at. Prospective employees also have a right to informational privacy; information irrelevant to the job should not be used in deciding whether to extend a job offer. If this information is allowed to be used in hiring decisions, it may limit a person's ability to express themselves in their private lives. In many cases, the information found online lacks any factual basis. Even factual information can be misinterpreted when taken out of context. By using information found on the internet to screen out applicants, companies are acting unethically by denying prospective employees the opportunity to interview for a job based on information that, even if correct, has little bearing on their ability to succeed at a given occupation.

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