Social Media & the Hiring Processing



In a recent survey, 88.5 % of employers said they consider social media sites like Facebook a legitimate source of background information about job applicants. Is using social media to unearth personal information about individuals applying for jobs with your organization a privacy violation? The privacy laws don't say. But recently, 2 provinces—British Columbia and Alberta—issued new guidance specifically addressing the subject.. Here's an overview of the guidance and what it portends for the privacy implications of social media background checks.

OVERVIEW

Issuance of Guidelines: Oct. 2011, BC became the first province to issue guidelines on social media background checks; on Jan. 5, 2012, Alberta issued very similar guidelines. **What to Do:** The Guidelines recommend that employers conduct a privacy risk assessment *before* doing a social media background check to:

- Identify privacy restriction(s) that applies, including laws, contract, etc.;
- Identify purpose of the check;
- Verify that purpose is legitimate and allowed under privacy restriction(s) (first bullet) above;
- Consider if there are less privacy intrusive ways that meet purpose;
- Identify types and amount of personal info check will collect, including collateral info about applicant or others that may get collected inadvertently;
- Identify risks of collecting inaccurate or unnecessary info;
- Ensure policies are in place to address risks;
- If collection isn't authorized, notify the individual of the check and your legal authority for undertaking it; and
- Be prepared to provide access to info you collect and use to make a decision about the applicant.

What NOT to Do: The Guidelines also list some assumptions about social media background checks that employers shouldn't make:

- The check will reveal info *only* about the individual job applicant;
- No employee privacy restrictions apply if you do the check from a personal account;
- No privacy restrictions apply if you have a third party do the check; and
- Job applicants won't find out that you did a check on them.

ANALYSIS

Employees and job applicants have privacy rights. In Alberta, British Columbia, and Quebec, and for federally regulated employers, those rights come from personal privacy laws like PIPEDA. In other jurisdictions, privacy rights are rooted in contracts, collective agreements and/or case law. But until now, the argument has been made that social media sites are public sites. That's important because the restriction on collecting, using and disclosing personal information doesn't cover publicly available information.

The significance of the new Guidance is that it blows up that assumption—at least in AB and BC. Social media background checks—whether a simple Facebook profile check or a comprehensive search on an individual—*are* subject to privacy rules, the Guidelines warn. Specifically, collection, use and disclosure must be "reasonable" and limited only to the amount reasonably necessary to fulfill the employer's legitimate business purpose. The privacy risk assessment outlined above is the key to keeping your own searches within those limits.