

Your Social Media Presence

Can an employer consider a person's social media presence when making employment decisions?

Yes. Whether or not you agree with that position, the answer is yes. There is no expectation of privacy on any social network platform. You can activate all the privacy settings you want, but no one can guarantee you 100% that your information will not be viewed or shared with another party.

Protected information is still protected, even on social media. So, if your employer learns of your age, sex, race, religion, sexual preference, disability, or any protected class category under the Equal Employment Opportunity Commission, that information cannot be used in any employment decision. But what about behavior that is not protected, and is a violation of your company policy or platform?

Consider these examples:

- An individual is working as a security guard for a Synagogue, and it is discovered that they write a weekly blog that is filled with Anti-Semitic rants.
- Another individual is responsible for a drug abstinence program at a local high school, but constantly posts pictures of themselves, drink in hand, promoting recreational drug use.
- The next individual is a receptionist for a corporate HQ, and they send threatening messages via twitter to someone, claiming to be "armed at all times" and ready to use their weapon.

Employers, while wanting to observe a work life separation, and a liberal degree of respect for their employees' privacy, must also be vigilant about protecting the safety of all employees, as well as the integrity of their brand. It is common for most employers to have their employees sign a Social Media Policy upon hire. This policy should be clear about expectations that could jeopardize someone's employment. It is NOT a violation of an employee's civil rights, or right to privacy, for an employer to view any information that an employee makes public; whether purposefully or inadvertently.

What advice can I give to employees about their social media profile?

Here are a few guidelines:

- If there is anyone, anywhere, that you do not want to see something you post, for any reason, do not post it. Share those thoughts, memories or intentions off-line.
- Do not ever say that you are speaking on behalf of your employer, unless you have express written permission to do so. Even in that situation, clear what you are saying with your employer before making it public.
- Put yourself in your employer's shoes, and ask yourself how they would interpret your post.

Your employer cannot come to your home and spy on you. Your employer cannot listen in on your personal phone calls made on your personal phone. Your employer can see, hear, and consider all information that you post on public social media. Your employer is bound by the same laws that ban discrimination against any protected class, but they are also within their rights to make sure all employees meet their company policy and legal requirements.

For more information, or for answers to any questions, contact:

Russ Cusick, SPHR, SHRM-SCP
Director HR Solutions
J.N. Savasta Corp.
1350 Broadway, Suite 410
New York, NY 10018
212-922-0111 ext. 67
rcusick@jnsCorp.com