

The Legal Implications of Using Social Media for Recruitment and Selection



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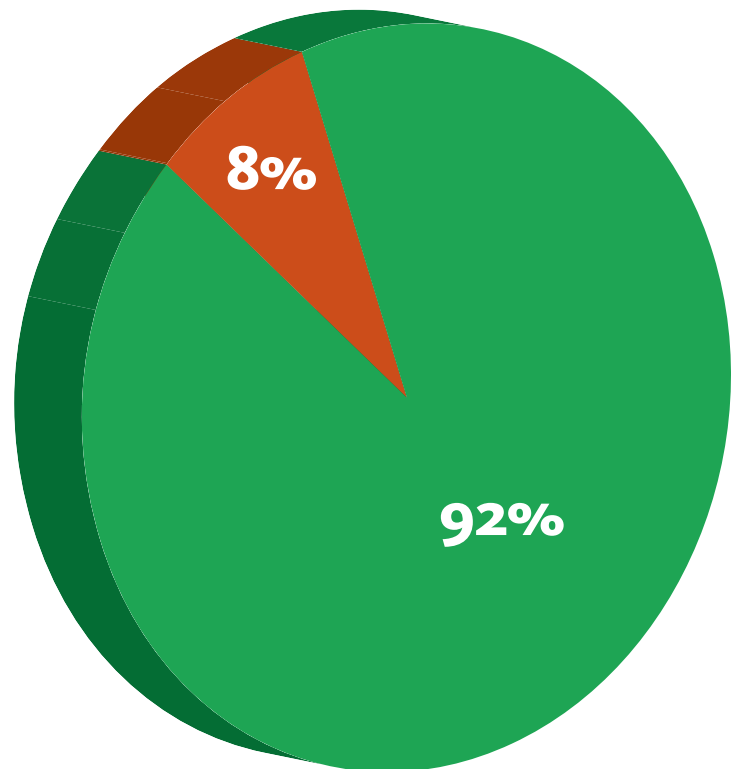
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INTRODUCTION

Over the past decade, technology has advanced at a rapid pace. Due to this evolution, recruitment and selection strategies have also undergone reconstruction. The Internet and the explosive growth in popularity of social media platforms has affected how employers are finding and selecting their employees.

A recent study by Jobvite reveals that 92% of respondents use or plan to use social media for recruiting purposes in the coming years. More employers are using social media recruiting because in doing so, they:

- Expand their network and applicant pool exponentially.
- Increase the quantity and quality of applicants and hires.



Once an applicant has been found, employers are directing applicants to the Web to complete job applications, answer questions regarding minimum qualifications and take assessments prior to having a job applicant visit an employer's place of business.

Such processes can be quick, convenient and cost-effective because they are designed to allow individuals to:

- Apply for employment 24/7
- Minimize paperwork
- Expedite time-to-hire
- Increase the size of applicant pools
- Pre-qualify candidates to minimize time wasted on unqualified candidates

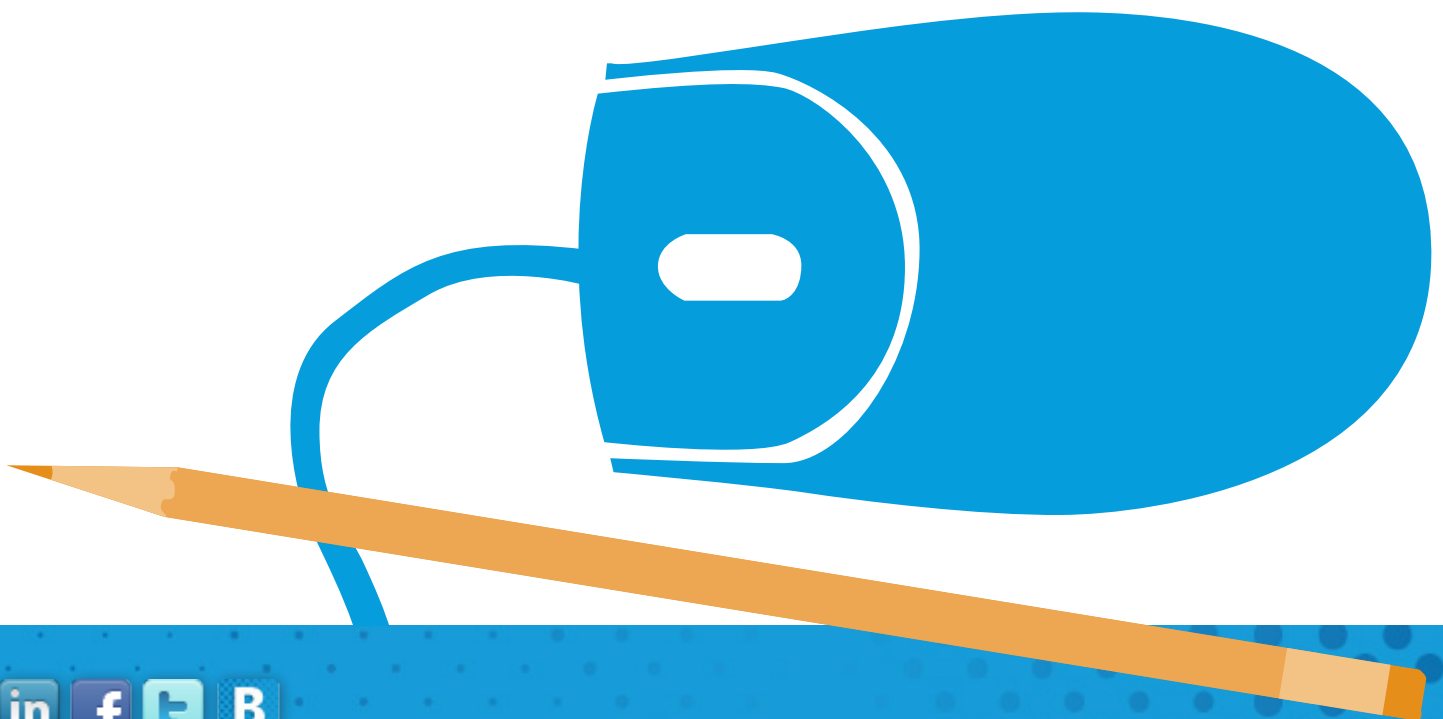
Along with these commonly recognized improvements, however, recruitment and selection technologies raise some specific legal issues.



REASONABLE ACCOMMODATION

Just like any other piece of the employment process, new technologies raise the issue of reasonable accommodation. Employers must realize that it is ill-advised to mandate that all applicants apply for employment via the Internet. Obviously various disabilities (e.g., visual impairments) may preclude some applicants from effectively using Web-based processes.

As a result, employers must be flexible in their approach to hiring and not mandate that applicants exclusively seek employment via their technology platforms. It is prudent for employers to describe their hiring process and associated technologies to applicants and invite them to seek reasonable accommodation. As part of this approach, employers should be willing to provide non-technology-based accommodations including, but not limited to, paper-based application/assessment materials and readers for such materials.

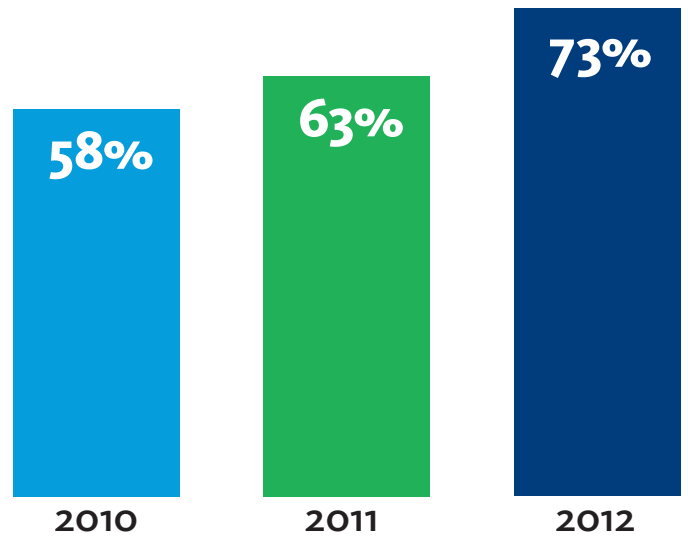


DISCRIMINATION AND GROWING LEGISLATIVE SCRUTINY/RESTRICTIONS

Social media has provided employers and candidates with a new way of connecting and interacting. Candidates are more easily able to find job listings and apply. Employers have access to a wider network of candidates than ever before. Of the employers who participated in the Jobvite study, 49% saw an increase in the quantity of applicants and 43% experienced an increase in their quality. The study also reveals that the majority of respondents (73%) have experienced success hiring a candidate through social media networks. ([Click here for link.](#))

QUANTITY/QUALITY OF APPLICANTS			
	INCREASE	DECREASE	STAYED THE SAME
TIME TO HIRE	14%	↓ 20%	38%
CANDIDATE QUANTITY	↑ 49%	3%	24%
CANDIDATE QUALITY	↑ 43%	3%	30%
EMPLOYEE REFERRALS	↑ 31%	2%	38%

SUCCESS HIRING THROUGH SOCIAL MEDIA NETWORKS



While there are many benefits that come with social media as a recruitment tool, there are many legal risks associated with the practice. If an employer chooses to use social media as a screening tool, they need to be careful they are complying with relevant laws that apply to screening job applicants.

Federal laws protect people from being discriminated against based upon their race, color, national origin, religion, gender, pregnancy, disability, and more depending upon the state in which the discrimination takes place. **If an employer utilizes information revealed via social media relating to an applicant's protected subgroup status, then it is likely to open itself up to successful claims of unlawful discrimination.** To avoid successful litigation, employers need to create policies that restrict hiring managers and recruiters from focusing on anything but information that is obviously related to performance of the job.

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Additionally, there is a significant legislative movement, at the state and federal levels, to restrict the use of the contents of social media to evaluate job applicants and employees. Specifically, as of midyear 2014, Arkansas, California, Colorado, Illinois, Louisiana, Maryland, Michigan, Nevada, New Jersey, New Mexico, New Hampshire, Oklahoma, Oregon, Rhode Island, Tennessee, Utah, Washington and Wisconsin have enacted statutes, which generally prohibit employers from requiring or requesting an applicant or employee to disclose a username or password for the purpose of accessing any personal social media. Social media is commonly defined as an electronic service or account, or electronic content, including but not limited to videos, still photographs, blogs, video blogs, podcasts, instant or text messages, e-mail, on-line services or accounts, or Internet Web site profiles or locations. At the federal level, legislators have introduced the Social Networking Online Protection Act (“SNOPA”) to address perceived problems in this area.



CONCLUSION

In sum, the use of Internet and social media in the employment process is extremely beneficial for employers and job applicants. Applicants can apply for jobs any time they want from almost anywhere. Employers typically experience significant process savings, while preventing the loss of applicants to competing employers because of delays in their recruiting process. However, it is important for employers to be aware of the longstanding legal issues, plus the growing statutory restrictions, that impact access to and the use of an applicant's social media. Through adequate recognition and addressing of these issues, employers can decrease the likelihood of expensive litigation, and their exposure to significant liability and negative public relations, while increasing the quality of their workforce.





ABOUT WONDERLIC

Are you ready to move beyond gut instinct into unbiased data when it comes to selecting the best new employees?

Our assessment strategy takes you beyond the resume and interview and into the world of real information. Cloud-based, job-related and legally defensible... you're not just testing. You're diving deep into each candidate and coming out knowing who your top choices are, no crystal balls needed.

Cognitive ability, personality, skills, qualifications and integrity – all critical components when selecting the right hire – harmonize to give you a complete picture of each candidate in just minutes.



Plug our assessments into your hiring process without worrying about integration and adoption. Our strategy is easy to use, lightning fast and ready to go.

Ready. Test. Go.

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