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jobseekers. Shailja Agarwal and Monika Mittal provide their research among Indian management students about their online behavior on SNWs, including implications for the workplace. Sherry Roberts and Terry Roach explain how many human resource professionals view the SNW profiles of job seekers. They provide related recommendations for job seekers in effectively managing their online professional images. In the final article, Allee Zhang, Yunxia Zhu, and Herbert Hildebrandt describe a theoretical framework for analyzing corporate use of wikis, blogs, and podcasts.

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NO PLACE TO PLAY: CURRENT EMPLOYEE PRIVACY RIGHTS IN SOCIAL NETWORKING SITES

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EMPLOYERS HAVE LEGITIMATE business interests in monitoring workplace Internet use: to minimize legal exposure, to increase productivity, and to avoid proprietary information loss. Since employees arguably have no expectation of privacy in their work on employers' computers, there are few grounds for complaint if they are disciplined for straying from corporate policy on such use. In this heavily scrutinized work environment, it is no small wonder that employees crave a place to unwind and play "electronically" after hours.

In unprecedented numbers, America's workers are visiting online social networking sites (OSNs) and posting tidbits that might not be considered job-appropriate by their employer. Here, many postulate they *do* have an expectation of and indeed a right to privacy, especially in arenas used to express personal freedoms and exercise individualism that has no bearing on their workplace.

Whether employers agree with this stance or not, an increasing majority are using employees' presence on OSNs to support discipline, termination, or simply not hire an individual. But is this fair if those actions are based on such Internet use *off-the-clock*?

Failure to Hire

A recent survey found that 63% of employers viewing OSN profiles have rejected candidates based upon information found within those profiles (Davis, 2006). Currently, there is no federal or California law that prohibits an employer from viewing unrestricted OSN profiles. According to veteran employment lawyer George Leonard (2006), employers are even "free to make unfair, stupid, arbitrary and wrongheaded hiring . . . decisions, even based on false information, as long as in doing so they do not violate some specific law." What an employer *cannot* do is create a fraudulent profile or hack through an applicant's OSN privacy features to gain protected information for hiring purposes. These actions breed claims of privacy invasion and possibly a violation of the OSNs' terms of service (Leonard, 2006). Particularly dangerous is information culled from OSNs regarding legally protected classifications (e.g., race, gender, sexual orientation, etc.), subjecting an employer to a discrimination claim when it is used against an applicant in the hiring process (Civil Rights Act of 1964, 2006).

Consequently, searching an OSN is unwise unless employers consistently document and disclose their searches (Rupe, 2007), making certain they can point to a legitimate business rationale for rejecting applicants ("Lawyers Warn," n.d.). It is no surprise then that many top law firms advise avoiding OSNs entirely during the hiring process ("Lawyers Warn," n.d.). Employers then avoid any risk, even from "an unfair inference that they relied on demographic data that was [*sic*] not visible on the application" ("Lawyers Warn," n.d.).

Discipline or Termination

Patricia S. Abril (2007) cautions that, in tort law, "those who have exposed themselves to the public eye cannot claim a reasonable expectation of privacy in their exposure" (§ 20). However, California has a double-thick wall of protection for residents who are being

disciplined or terminated for OSN “exposure” *off-duty*: its Constitution and “lifestyle protection” statutes.

California Constitution

Unlike the federal right to privacy, California’s right is embedded in the state constitution and protects individuals against privacy infringement from both public and private entities (Betzel, 2006). Conducting personal activities without observation, intrusion, or interference is one of these protected privacy interests (*Hill v. National Collegiate Athletic Association*, 1994, p. 35). An employee could argue that he or she has a reasonable expectation of privacy in off-duty Internet conduct that doesn’t relate to employment concerns and that an employer’s invasion there would be considered serious by today’s norms. If the employee’s off-duty OSN conduct does not run afoul of the employer’s legitimate business interests, then any discipline/termination based on such use is most likely a violation of the employee’s constitutionally protected privacy right.

Lifestyle Protection Statutes

A second layer of employee protection is found in California’s lifestyle protection statutes. While approximately twenty-eight states have such laws to shield employees’ off-the-job interests (e.g., tobacco and lawful products use), only California, Colorado, North Dakota, and New York have extended protection to those who engage in *any* lawful behavior unrelated to their employment (Bosch, 2003). California’s Labor Code §96(k) (2007) is broadest, forbidding discharge or discrimination against employees (and even applicants) for engagement in “any lawful conduct occurring during nonworking hours away from the employer’s premises.” California’s legislature went so far as to intentionally exclude language that would accommodate employers’ use of the business necessity or conflict of interest defense for adverse employment decisions based on off-duty conduct (Davis, 2006). On its face, §96(k) protects a wide swath of off-duty OSN activity but remains untested in California courts.

Employer OSN Policies

If a company persists in searching OSN profiles to back employment decisions, a finely crafted policy must be in place delineating practices

for *all* OSN use—on duty and off. According to preliminary findings from their upcoming benchmark study on organizational OSN use, Enterprise 2.0 reports a wide variance in existing policy (Lazar, 2008):

Small companies, those in technology verticals and educational institutions tend to be the most open, often not just allowing the use of public social networking sites, but actually encouraging it. A split appears in more traditional companies, with marketing and customer support groups often embracing social networking tools to create a community for their products and services, while restricting access by employees in other groups.

When this study concludes, a clearer picture of how many policies address off-duty limitations on OSN use will emerge. This is an area ripe for further studies assessing policy deficiencies and remedies in light of California's broad lifestyle statute protection.

Conclusion

California leads the pack in building a safe playground for its residents to lawfully frolic on the Internet after work. Until a body of case law interpreting these laws is built, wise employees should exercise restraint in their online presence as it reflects on their work life. Even so, employers are well advised to establish all-encompassing OSN policies that protect business interests, give employees personal freedom, and allow OSN use for both parties' growth.

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ARE BUSINESS-ORIENTED SOCIAL NETWORKING WEB SITES USEFUL RESOURCES FOR LOCATING PASSIVE JOBSEEKERS? RESULTS OF A RECENT STUDY

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THE FIRST SOCIAL networking Web site, Classmates.com, was established in 1995 (Cashmore, 2007). It provided a means by which geographically dispersed graduates of specific schools could reintroduce themselves and initiate communications. Three years later, the first business-oriented social networking site—ecademy—was created. The purpose of this U.K.-based enterprise was to offer a forum in which employees throughout the world could locate former colleagues or forge new relationships with professionals who might share expertise or serve as useful contacts for sales or other business-related activities. Since then, at least 10 major business-oriented networking sites have emerged, the largest being LinkedIn, which maintains a membership of 24 million individuals representing 150 types of businesses (Wikipedia, 2008).