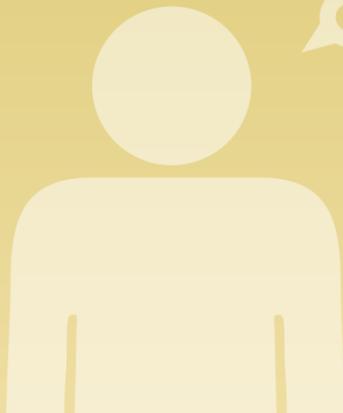


# *Is Using Social Media the Best Way to Screen Candidates?*



In this era of social media, it may seem as if nothing is private anymore. You may be tempted to scour social media networks to see what job candidates are *really* like. But doing so may land you in hot water.

**M**any business owners feel that the growth of social media allows them to circumvent traditional background and criminal checks by Googling a potential employee to find everything they need.

It's true that social media can provide one view into a potential employee, but hiring or rejecting candidates based on their social media profiles is still a gray area that can open your company to potential lawsuits and claims of privacy violations. You may even be breaking the law.

Employers often routinely review public Facebook profiles, Twitter accounts and other sites to learn more about job candidates, says Melissa Trocko, managing director, recruiting research and development, Insperity™ Recruiting Services, but concerns arise when employers try to secure access to candidates' private social media accounts. Recent tactics have included asking for passwords, asking applicants to friend human resource managers or asking applicants to log in to a company computer during an interview.

*Maryland House Bill 964/  
Senate Bill 433 prohibits  
employers from requesting  
access to employees'  
password-protected digital  
content or social media  
account information.*



## **Legal Implications**

One request for a job candidate's password led directly to the Maryland General Assembly becoming the first in the country to pass a law keeping social media passwords safe from employers. Effective Oct. 1, 2012, Maryland law prohibits employees from having to provide access to their password-protected digital content or social media account information.

In a recent ABC News story, Maryland State Senator Ronald Young told the network that he felt such social media password practices were an "infringement on constitutional rights."

Facebook has gone on record as agreeing that password requests are wrong. Giving out login information violates the social network's terms of service. Even if those terms carry no true legal weight, which is still in question, the legality of asking for this information remains murky at best. Maryland has gone so far as to make it illegal for employers to ask potential employees for their passwords to social networking sites.



Other states don't appear to be far behind. Minnesota, Illinois and New Jersey have drafted legislation based on Maryland's bill, and similar legislation is expected to follow in other states.

The Social Media Law Blog recommends establishing an internal procedure for making employment decisions based on Internet research. It states that **more than 50 percent of employers surveyed in 2011 acknowledged using the Internet to research job candidates**. Those same employers may not be aware, however, that the information is being factored into managers' evaluations of candidates.

Jeff Jones, division president of Insperity™ Employment Screening, points out that the danger is that information about a potential hire can lead to inadvertent discrimination, "or perception of discrimination," based on age, religion, disability, race, gender or other protected classes. Employers who are mistakenly thinking that they're protecting their businesses may actually land themselves in the middle of a discrimination lawsuit.

Only one business to date has secured Federal Trade Commission (FTC) approval to access social media reports and sell them to employers. That company is considered a consumer reporting agency (CRA) and has garnered a "no action" letter from the FTC, which has questioned its practices. The FTC stated that the action "is not to be construed as a determination that a violation may not have occurred," and that the FTC "reserves the right to take further action as the public interest may require."

"Employers should make sure a provider has the mechanisms in place to remain compliant as a CRA, to help clients understand their own responsibilities, to monitor potential/passed new laws or changes and to be able to react swiftly to maintain compliance," says Jones.

## Good Defense

As the use of social media for employment screening purposes becomes increasingly fraught with legal implications, your best defense for screening potential hires is relying on a reputable employment screening company that uses traditional searches for employment and criminal histories.

“Companies that regularly provide background checks for a fee to employers are considered CRAs and are required to adhere to federal and state laws governing the release of personal information for employment purposes, and these laws are ever-changing, especially at the state level,” says Jones.

Developing a solid pre-employment process that includes a comprehensive background check by a trusted, reputable outside party will contribute to your company’s success. It’s the best way to build a reliable workforce while avoiding discrimination, negligent hiring claims and legal liability from questionable use of social media.

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To find out more or learn how  
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