

The Growing Trend of Social Networking Websites and the Continued Importance to Due Diligence Inquiries



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Increasingly, employers and potential investors in a company are able to learn information about job applicants and individuals affiliated with a company through various online social networking websites. According to Pew Internet & American Life Project's December 2008 tracking survey, 35 percent of all adult Internet users have a profile on a social networking website. Some of these websites, including Facebook and MySpace, have a more personal purpose, serving as a forum in which users share photos, comments, and personal information. Once limited to college students, Facebook, like MySpace, is now open to users around the world. Other websites, including LinkedIn, are used primarily for business networking. With the percentage of adults using social networking websites increasing and the popularity of such websites spreading around the world, a review of social networking websites during the course of due diligence inquiries remains important.

LinkedIn, which was founded in 2003, claims that its membership has risen from 20 million users in March 2008 to 34 million current users. Users of LinkedIn create profiles in which they summarize their professional background. Employers or potential investors who access the LinkedIn profiles of potential employees or individuals in a pertinent management role are advised to look for discrepancies between biographical information submitted by the individual and information in the individual's LinkedIn profile. A significant discrepancy in dates worked at a former employer, for example, may suggest an attempt to mislead. In addition, individuals may include jobs on their LinkedIn profile that are not included on other biographical profiles due to adverse happenings at the entity (i.e., company filed for bankruptcy, major litigation, or regulatory violations). LinkedIn profiles can also confirm where a subject is/was based with an entity (i.e., at a firm's Berlin office instead of its U.S. corporate headquarters). This, in turn, can assist in determining whether it is necessary to conduct any country-specific inquiries during the course of due diligence inquiries.

Employers and/or potential investors should check social networking websites to ensure that job applicants or current employees have not posted any information that could be potentially damaging or embarrassing for the employer or potential business partner. In October 2008, it emerged that airline Virgin Atlantic was investigating staff for malicious comments made on Facebook, including insults to passengers and criticism of aircraft safety standards. The employee involved in these postings was reportedly fired. While these comments by staff can be seen as an embarrassment to Virgin Atlantic, any potential investor in the entity would be interested in learning current staff comments on various aspects of the company. Even if the comments are not able to be proved, it may still be of interest to potential investors to learn the staff's opinion. While checks of social networking websites may be helpful in alerting employers to potential "red flags" regarding both job applicants and current employees, employers must remain vigilant that such resources are not used improperly. In an article published by *The Miami Herald* in November 2008, Foley & Lardner LLP counsel Mark J. Neuberger states that employers using the Internet for screening must "remain focused on the legitimate, nondiscriminatory information." Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on race, color, religion, sex, and national origin.

The effective use of social networking websites for employers or potential investors is often limited by restrictive access settings. While the public profiles are the default of many social networking sites, Pew's survey indicates that 60 percent of adult social network users have restricted access to their profiles. This seems to be the case for MySpace and Facebook profiles; however, users of LinkedIn generally have less

of a need to restrict access to profiles, as they share professional credentials instead of their social lives. LinkedIn, unlike many popular other social networking websites, also does not prompt members to provide information about religion or political views. Some employers are asking potential employees to provide access to these restrictive social networking websites. A November 14, 2008, article from *Computerworld* reported that President Barack Obama's transition team asked applicants for jobs in the new administration to provide links to blog posts and social networking profile pages that could embarrass Obama. Even on individual profiles that are restricted on Facebook and MySpace, individuals conducting due diligence inquiries are for the most part still able to learn if an individual in question maintains a profile, depending on the commonness of the subject's name, and at least see the subject's "profile" picture. Some individuals have been known to have profile pictures showing questionable or even illegal acts, such as pictures of illegal drug use.

In terms of conducting due diligence inquiries, social networking websites continue to be considered a useful tool. While websites such as Facebook and MySpace were designed for personal use, potential employers or potential investors in a company gain comfort in knowing that nothing adverse or unethical is contained on a subject individual's personal profile on these websites. Questionable activity on an executive's social networking profile or a potential employees profile can have a negative impact on a company's reputation. Social networking websites designed for more professional usage, such as LinkedIn, can also contain useful information for due diligence inquiries. LinkedIn profiles can help determine prior corporate affiliations as well as any educational or professional license claims that can be verified.



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