

Facebook Demand Triggers Privacy War

By Holly Culhane, Contributing Columnist



Want a job? Then hand over your Facebook sign-on and password.

Recent reports that some employers are demanding job applicants give hiring officials unfettered access to the non-public areas of their social media accounts, have touched off a firestorm of protests and motivated legislators in several states, including California, to propose bills to stop what many are calling an egregious invasion of privacy.

Orin Kerr, a George Washington University law professor, told reporters last week that the demand is akin to “requiring

someone’s house keys.”

Facebook’s chief privacy officer, Erin Egan, has vowed his company will “take action to protect the privacy and security of our users, whether by engaging policymakers or, where appropriate, by initiating legal action, including by shutting down applications that abuse their privileges.”

Sens. Charles Schumer of New York and Richard Blumenthal of Connecticut have called for an investigation to determine if the Facebook disclosure mandates violate the federal Stored Communications Act or the Computer Fraud and Abuse Act.

“In an age where more and more of our personal information – and our private social interactions – are online, it is vital that all individuals be allowed to determine for themselves what personal information they want to make public and protect personal information from their would-be employers,” Schumer told reporters, contending the practice could violate anti-discrimination laws, since it potentially gives companies a look at an applicant’s religious views, ethnicity, sexual preference and other “protected” information.

Beyond the privacy issue, the most fundamental problem – and potential liability for employers – is the access to information that cannot legally be used in hiring decisions.

Some companies routinely conduct Internet searches of publicly available information about jobseekers. Taking the process a step further by demanding access to social media accounts can strip applicants of all “private” information.

The Internet is a “gold mine” of information – some of which is relevant to the hiring process, and some of which should not be considered. Companies must take great care to recognize and honor the difference.

No matter who conducts a background investigation, procedures should be enforced that:

- First obtains a job applicant’s written permission to conduct the investigation.
- Does not include “inappropriate” information that may illegally taint hiring decisions and does not include background information that is not applicable to the position for which the person is applying.
- Uses a credible background investigation organization to assure the information is accurate.
- Insures compliance with federal and state laws regarding background investigations and hiring discrimination.

This latest privacy controversy should make jobseekers increasingly cautious about the tone and content of the information on their social media sites. Although I do not recommend employers conduct social media checks, applicants should be aware a potential employer may informally choose this route. The applicant should do their own check of Facebook, Craigslist, LinkedIn, blogs, forums, etc., and remove questionable information.

The Internet is a powerful communications tool. For the power to be safely used, however, it must be handled with care and common sense.

This article written by Holly Culhane first appeared online and in The Bakersfield Californian on Friday, March 30, 2012. Holly Culhane is president of the Bakersfield-based human resources consulting firm P.A.S. Associates. She can be contacted through her website www.pasassociates.com and through the [PAS Facebook](#) page or by phone at 631-2165.

P•A•S Associates has expertise in human resources and other areas involving employment issues. P•A•S Associates, in providing this website, does not represent that it is acting as an attorney or that it is giving any form of legal advice or legal opinion. P•A•S Associates recommends that before making any decision pertaining to human resource issues or employment issues, including the utilization of information contained on this website, the advice of legal counsel to determine the legal ramifications of the use of any such information be obtained.