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On behalf of the
Society for Human Resource Management

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Introduction

Chair Berrien, and distinguished Commissioners Barker, Feldblum, Lipnic, and Yang, my name is Jonathan Segal, and I appear today on behalf of the Society for Human Resource Management, also known as SHRM. I am a partner at Duane Morris LLP and specialize in employment law in general and equal employment opportunity in particular. I am also the Managing Principal of the Duane Morris Institute. The Institute provides training for human resource professionals, in-house counsel, and managers. I frequently speak, write, blog and tweet about employment law and issues affecting human resource professionals in the workplace. I am also the former State Legislative Director for Pennsylvania SHRM.

Founded in 1948, the Society for Human Resource Management (SHRM) is the world’s largest HR membership organization devoted to human resource management. Representing more than 275,000 members in over 160 countries, the Society is the leading provider of resources to serve the needs of HR professionals and advance the professional practice of human resource management. SHRM has more than 575 affiliated chapters within the United States and subsidiary offices in China, India and United Arab Emirates.

It is SHRM’s mission to proactively provide our members with educational resources on workplace law compliance, effective HR practices and strategic workforce issues. We supplement this information with research on critical HR issues and benchmarking data to help our members learn and incorporate the HR strategies of successful organizations. HR professionals play a critical role in creating a workforce comprised of skilled and talented employees as well as creating a work environment that yields high levels of employee satisfaction to attract and retain the skilled workforce the organization needs to meets its business objectives.

In the specific areas of recruitment and hiring, SHRM offers the Talent Management Conference, which is solely focused on helping HR professionals build strong and successful strategies for talent management. This year’s conference, held in Nashville, Tennessee, in April, will provide three days of programming covering all aspects of recruitment, hiring and retention including the use of social media in recruitment.

The growth of social media has significantly changed the way people communicate at home and at work. These applications present great opportunities for organizations, and many are using social media for a variety of purposes including public relations, internal and external communications, recruiting, and organizational learning and collaboration. In addition to private citizens and private organizations, government entities are increasingly using social media to communicate including the President, Members of Congress and EEOC Commissioners.

In my testimony today, I will briefly mention some of the interesting and innovative ways that employers are integrating social media in the workplace. The remainder of my testimony will focus on employer use of social media tools for recruiting and hiring.
Overview of Employer Use of Social Media

Social media can be a powerful business tool, particularly in the accomplishment of HR-related tasks. I have highlighted some of the emerging workplace social media trends below:

**Employee engagement**
Organizations are increasingly realizing the power of using social media for employee engagement. Some organizations use a corporate Facebook page to communicate new programs or policies to employees. This method allows employees to react immediately and comment or ask questions. Multinational corporation Intuit uses a corporate blog and video sharing to broadcast its semi-annual corporate meetings to employees around the world. Social media is recognized as a tool that supports workplace flexibility because of its real-time ability to engage employees no matter where they are working.

Some employers are also supporting their diversity and inclusion goals through the creative use of social media. One example is the American Airlines BlackAtlas social networking site, which the company launched in 2009 with input from its African-American resource group. This site is designed for people who are interested in travel and discovering African-American and black culture. Users of this site can post videos and other information.

**Knowledge sharing**
Social media is also used to enhance knowledge sharing within an organization. Deloitte, for example, created DStreet, an internal social network that allows employees to create a personal landing page including a photo gallery and blog. DStreet allows employees to collaborate on documents, seek assistance, identify experts, share knowledge, and network with one another. Millions of companies around the world are now using internal social networking sites for similar business purposes.

**Marketing and Crisis Management**
In a 2011 SHRM survey, 68 percent of HR professional survey respondents reported that their organizations were using social media for external communications, recruiting and marketing to engage clients, potential customers and employees. In addition to traditional branding and marketing of the company, social media has proven helpful to some to communicate with employees, clients, suppliers and the media during an emergency. When Fargo, N.D., was hit with floods, Innovis Health needed to get the word out that the hospital was staying open. With phone lines overloaded, the company started blogging and tweeting the information to the public. Within a short period of time the information had spread throughout a large swath of the community.
I will now turn to the employer use of social media in recruitment and screening.

**Employer Use of Social Media in the Hiring Process**

Employers use social media in two ways in the context of the hiring process. First, some employers use social media to recruit candidates by publicizing job openings and encouraging individuals to apply for jobs. Second, some employers use social media in their background check process in order to confirm a candidate’s qualifications for the specific position. SHRM surveyed its members extensively in 2008, 2011, and 2013 on the use of social media for employee recruitment and selection. In its 2013 study, SHRM discovered that 77% of companies indicated that they were using social networking sites to recruit candidates for specific jobs. That compares to 56% in 2011 and 34% in 2008. Smart employers want to cast as broad a net as possible to reach as many potential candidates as possible and are increasingly harnessing social media as part of their recruitment strategy.

Of course, not every job seeker uses social media. For some, that may raise a concern. The concern rests on the assumption that an employer who uses social media will rely solely on social media, thereby failing to consider otherwise qualified candidates who are not social media users. However, I do not know of any employers who rely solely on social media to recruit. In fact, most consider it a best practice to diversify recruiting tools in order to reach potential talent and cast as broad a net as possible.

Smart employers use a variety of sources to develop a diverse applicant pool, and social media is but one vehicle. The percentage of recruiters who indicated that social networking websites are an efficient way to recruit for a variety of job levels more than doubled between 2008 and 2013. In SHRM’s 2013 survey, 41 percent of recruiters said that these sites are efficient for recruiting executive/upper management such as the CEO or CFO, an increase from 27 percent in 2008. About 80 percent believed they are efficient for recruiting other management positions, compared with 54 percent who thought so in 2008.

According to 80 percent of recruiters surveyed by SHRM in 2013, one of the top reasons why they find social media recruiting beneficial is that it may reach passive job candidates who otherwise might not apply or be contacted. This was also a top reason given in 2008 (69%). Other reasons include the ability to target job candidates with a specific skill set (69%) and allowing potential job candidates with an easy way to contact your organization about employment (57%). Again, social media helps broaden the pool of potential candidates as one tool to use in the recruitment process.

Among organizations that used social networking sites for recruiting, the most utilized social networking website in 2013 was LinkedIn (94%). This was followed by 54 percent of respondents using Facebook, followed closely by Twitter (39%). Indeed, there are many LinkedIn groups that are effectively affinity groups that can help employers in their efforts to reach diverse candidates.
SHRM is currently working with the White House to focus attention on the Long-Term Unemployed. I feel particularly honored to have worked with SHRM on this project. As part of this initiative, SHRM created How-To Guides, including one for HR on how to make sure you are not overlooking skilled talent and one for Job Seekers on how to effectively market themselves even if they have been long-term unemployed. One of the recommendations SHRM has made to the long-term unemployed job seeker is to network in multiple ways, including on social media. Job seekers are encouraged to “brand” themselves and join communities of interest on LinkedIn. To ignore social media today is like ignoring e-mail 20 years ago. Social media is no longer cutting-edge; it is now mainstream.

Employers may use social media not only to recruit but also screen job applicants. In SHRM research, screening is defined as “the process of checking the background of candidates before the hiring process is complete.” As previously referenced in this statement, SHRM’s 2013 survey found that a majority of employers (77%) use social networking websites to recruit potential job candidates. Far fewer employers use social media to screen job applicants. In 2013, 28 percent reported using online search engines, such as Google or Bing for screening, a slight decrease from 34 percent in 2008. In 2013, 20 percent reported using social networking websites, such as Facebook for screening, a slight increase from 13 percent in 2008.

When surveyed in 2013 about why they decided not to use social network sites for candidate screening, three-quarters (74%) of organizations said they were concerned with legal risks or discovering information about protected characteristics (e.g., age, race, gender, religious affiliation) when perusing candidates’ social profiles. Sixty-three percent indicate the information from these sites may not be relevant to their work-related potential or performance, and 61 percent think the information may not be relevant to whether the candidate is a good fit for the organization.

I believe the potential EEO concern for employers that do screen using social media and online searches is clear: an employer may learn information about a candidate’s protected group. For example, from the candidate’s picture, the employer may learn his or her likely race, approximate age and more. Depending on the social media platform, the employer may learn even more. For example, on Facebook, some employees post personal information, such as medical or family problems.

But the fact that the employer may learn information about a candidate’s protected group status or other information—regardless of whether it is learned on social media or through a phone or face-to-face interview—does not mean that the employer will use it. While we do not doubt the existence of illegal discrimination in our society, we do believe that most responsible employers recognize that illegal discrimination is not only a legal wrong, it is also bad business.

It is also important to keep in mind that there can be valuable information on a candidate’s social media page, posting, etc., that an employer lawfully can consider. Individuals have posted everything from pictures of themselves wearing little clothing to racist rants.
I have heard it said there are only two times when a person is perfect: birth and the job interview. Social media is but one way to enhance the background check to determine whether a candidate should be hired.

I think of the employer who did not hire for a supervisory position a candidate who had posted racist rants on his public Facebook page. I am glad that employer checked the public Facebook page. I think how much better off the workplace is without that individual in a position of authority. Contrary to what some may believe, the fact that some employers screen applicants by looking at their social media sites does not mean that the use of social media results in widespread exclusions. According to SHRM research in 2011, of the organizations that use information from online search engines or social networking websites to screen candidates, few have actually used this information to disqualify job candidates, with only 15 percent of this group indicating that they used online search engine information and 30 percent using social networking website information to disqualify job candidates.

So, ultimately, similar to other kinds of background checks, we do not believe there is an “on-off” switch when it comes to the use of social media as it relates to hiring. Rather, key questions that should be considered include: when it is done, what is looked at, who is doing the looking and what is and is not considered in the decision-making process. Employers who have used social networking sites and online searches to screen candidates are increasingly adopting policies that define the use of such techniques. In 2008, 72 percent of organizations had no formal or informal policies regarding the use of these sites for job screening. In 2013, this figure dropped to 57 percent, and another 28 percent of organizations plan to implement a formal policy in the next 12 months, up from 11 percent in 2008.

In addition, in 12 states, employers cannot ask an applicant (or employee) for his or her social media password. In all 50 states, asking for an applicant’s or employee’s password creates a real risk of violating the federal Stored Communications Act. For this reason, employers should look only at what is public and not ask for passwords any more than they would ask for the keys to someone’s home.

It is considered an effective practice if someone in HR checks social media sites rather than a line manager. The HR professional is more likely to know what he or she can and cannot consider. Finally, ordinarily, it is better if the social media check is done later rather than earlier in the process. After an applicant has been interviewed, his or her membership in many protected groups is already known. So, checking his or her LinkedIn profile or tweets is not likely to reveal much more than HR already knows. This is reflected in the fact that, of the organizations that use these methods for screening, the most commonly reported time for conducting the screening was after the job interview but before the job offer.

I recognize that a candidate’s social media platform may reveal some information that employers cannot and should not consider. This tends to be truer with Facebook, but it also can apply to LinkedIn and Twitter as individuals include some personal information about themselves. For example, an individual may tweet that she is pregnant or reference that he is in recovery from alcoholism.
At the same time, there could be legitimate information that an employer can and may want to consider, such as an applicant’s involvement in helping Vietnam vets find jobs. As with other background checks, it is not the “looking” that is the legal issue. The legal issue is what the employer does, or does not do, with what it discovers.

**Conclusion**

Because social media engagement is a relatively new territory for both employers and employees, we are constantly refining how these tools should and should not operate in the workplace. For employers, the key questions are how to get business benefits out of these platforms and how to ensure that employee use of social media while at work is neither distracting nor potentially harmful to the organization. Today, millennials (those under 30) account for 36% of the U.S. workforce, according to the Bureau of Labor Statistics, and, by 2025, they will account for 75% of the global workplace, according to the Business and Professional Women’s Foundation. Given that this group of employees has grown up actively communicating via myriad social media sites and devices, the use of social media is a workplace trend with staying power for the foreseeable future.

In the latest information from SHRM surveys on the subject, a 2012 SHRM survey reported that 55 percent of organizations planned to increase their overall social media use within a year. Organizations are embracing social media for business use because the return on investment is getting clearer.

Thank you for your invitation to participate in today’s meeting. I look forward to answering your questions.