



✓ Facebook  
 ✓ Google  
 ✓ Twitter  
 ✓ LinkedIn  
 ✓ YouTube  
 ✓ Instagram

**PLUNKETT & COONEY**  
A CENTURY OF DISTINCTIVE SERVICE

## Careful What you ask for...

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**Avoiding Costly Hiring Process Mistakes  
 Involving Social Media & Background Checks**

Presented by  
**Courtney L. Nichols**

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## Today's Presenter

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## Social Media Revolution

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# Social Media is about People


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## Social Media Revolution

Over **50%**  
of the world's population is under  
**30**  
years old



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## Social Media Revolution

**1 in 5** couples meet online



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## Social Media Revolution

**1 in 5** divorces are blamed on **facebook**



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## Social Media Revolution



What happens in Vegas stays on YouTube



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## Social Media Revolution



Kindergartens  
are learning on  
iPads



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## Social Media Revolution



If Facebook  
were a country  
it'd be  
the world's  
3rd largest



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## Social Media Revolution



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## Social Media Revolution

**“We don’t have a choice on whether we DO social media, the question is how well we DO it.”**  
– Erik Qualman

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## Social Media Revolution



social gamers will buy **\$6 billion** in **virtual** goods by 2013

movie goers buy **only \$2.5 billion** in **real** goods 

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## Social Media Revolution

**You Tube**  
is the **2nd**  
largest search engine  
in the world

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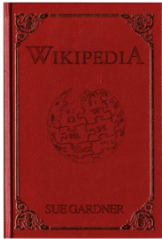
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## Social Media Revolution

**If Wikipedia were made into a book**



it would be  
2.25 MILLION  
pages long  
and would take you  
over 123 years  
to read

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## Social Media Revolution

**The ROI of Social Media is  
Your Business Will Still Exist in 5 years**

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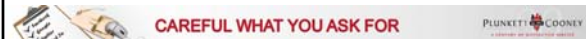
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## Role of Social Media in Hiring Decisions

- Companies are using it
  - Career building study
    - 39 percent of companies use social networking sites to research candidates (via nationwide study conducted online by Harris Interactive® on behalf of CareerBuilder).

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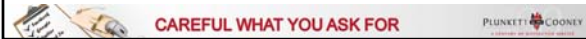
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## Role of Social Media in Hiring Decisions

- Increase from 37 percent in 2012
- 43 percent of hiring managers who research candidates using social media found information that caused them not to hire candidate.



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## Why use it?

- Benefits
  - Recruiting
    - LinkedIn
  - Determine whether candidate is good fit based on your company's culture

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## Why use it?

- 19 percent of hiring managers indicated they found something that caused them to hire candidate (according to CareerBuilder study).
  - Personality
  - Wide range of interests
  - Communication skills



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## Risks of Using Social Media

- Inaccurate Information
  - Make a decision based on false information
  - Do not know exactly what you are seeing



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## Risks of Using Social Media

- Discrimination
  - Internet searches can manipulate an employer's decision based on "protected traits" such as: gender, race, ethnicity, pregnancy and weight.

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## Risks of Using Social Media

- Federal and state law prevents employers from using certain non-job related information in making hiring decisions.
- EEOC Strategic Plan – Focused on disparate impact (to be discussed in more detail later)



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## Anti-Discrimination Statutes

- Title VII of the Civil Rights Act of 1964
- Americans with Disabilities Act
- Genetic Information Non-Discrimination Act of 2008
- Age Discrimination in Employment Act of 1967
- Uniformed Services Employment and Reemployment Rights Act of 1994
- Elliott Larsen Civil Rights Act



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## Michigan's Internet Privacy Protection Act

- Another risk: invasion of applicant's privacy
- Internet Privacy Protection Act (IPPA) passed on Dec. 13, 2012.



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## Internet Privacy Protection Act

- What can't an employer do?
  - Request that employee or applicant grant access to, allow observation of, or disclose information that allows access to or observation of "personal internet accounts" (Gmail, Facebook, Twitter, etc.)
  - Discharge, discipline, fail to hire, or otherwise penalize employee or applicant for declining such a request



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## Internet Privacy Protection Act

- What can employer do?
  - Comply with duty to screen employees or applicants prior to hiring or to monitor or retain employee communications that is established under federal law or by self-regulatory organization as defined in Securities and Exchange Act of 1934

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## Internet Privacy Protection Act

- View, access or utilize information about applicant that can be obtained without any required access information (i.e., public information).



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## Fair Credit Reporting Act

- To be discussed in more detail later – however, should be aware now that Spokeo = Consumer Reporting Agency.



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## Best Hiring Practices

- In-House use of social media
  - Trained personnel, designated as researchers
  - Separate and distinct from decision maker
  - Policy regarding *not* using social media in hiring decisions

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## Best Hiring Practices

- Outside search companies
  - Hire third party to handle your social media searches.
  - BUT, be careful, if you use third party which is a Consumer Reporting Agency to conduct background checks, required to get authorization.



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## Background Checks

- On EEOC's radar
  - EEOC Strategic Plan (2013-2016)
  - #1: Eliminating barriers in recruiting and hiring
    - EEOC will target class-based recruitment and hiring practices that discriminate against racial, ethnic and religious groups, older workers, women and people with disabilities.



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## EEOC Systemic Initiative

- What does it mean?
  - Pattern or practice, policy, and/or class cases where alleged discrimination has broad impact on industry, profession, company or geographic area



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## What Guidance has EEOC Provided?

- Using arrest and conviction records as "absolute measure to prevent an individual from being hired could limit the employment opportunities of some protected groups and thus cannot be used in this way."

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## What Guidance has EEOC Provided?

- Arrest does not = commission of crime
- Employer should allow applicant opportunity to explain circumstances of arrest(s) and should make reasonable effort to determine whether explanation is reliable.



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## But What if...

- Employer does believe that applicant engaged in conduct for which he/she was arrested:
  - That should prevent applicant from employment *only to extent* that it is evident that applicant cannot be trusted to perform duties of the position when:
    - Considering nature of job
    - Nature and seriousness of offense
    - Length of time since it occurred



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## Keep in Mind!

- According to EEOC, same rules apply for a conviction!



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## Why is EEOC Concerned?

- Disparate Impact
  - Unlawful disparate impact occurs when neutral policy adversely affects individuals in protected status, unless employer can show that challenged practice is “job related for the position in question and consistent with business necessity.”

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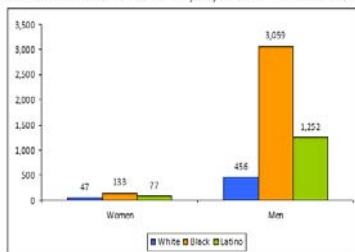
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## Why is EEOC Concerned?

RATE OF INCARCERATION PER 100,000, BY GENDER AND RACE, 2010



Source: Guerino, P., Harrison, P. M., & Sabol, W. (2011). *Prisoners in 2010*. Washington, DC: Bureau of Justice Statistics.



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## Fair Credit Reporting Act

- 15 USC 1681 et. seq.
  - Sets national standard for employers to follow when conducting background checks on applicants or employees
    - Advise applicant in writing that background check will be conducted

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## Fair Credit Reporting Act

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- Obtain applicant's written authorization to obtain records
- Notify applicant that poor credit history or conviction will not automatically result in disqualification from employment

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## Fair Credit Reporting Act

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- Check before taking any adverse action
  - Employees must be told if information obtained via credit report/consumer report is being used as basis for adverse action.



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## Michigan Law

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- MCL 37.2205a
  - Prohibits employers from asking applicants about misdemeanor arrests not resulting in convictions



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## Best Practices

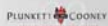
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- Do not be discouraged
  - Conduct background checks!
  - Call references!
- Have established company conduct background checks
  - Criminal check
  - Employment Verification
  - Education Verification

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## Best Practices

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- Review your policies
  - Automatic disqualification policies need to be updated



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## Questions?

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## Save the Date

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- **November 15** – How key changes to the ADA Amendments Act have impacted accommodating and litigation disability claims



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## Thank You!

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