

Social Media: Discrimination

Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](http://www.mtas.tennessee.edu)). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

The University of Tennessee
Municipal Technical Advisory Service
1610 University Avenue
Knoxville, TN 37921-6741
865-974-0411 phone
865-974-0423 fax
www.mtas.tennessee.edu

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Discrimination Based on Protected Classes

Most social networking sites show an employer a person's gender or gender identity, race, age, sexual orientation, neighborhood, family members, religious views (or absence thereof), family status, pregnancy status, and political views. In some cases a person's profile may yield direct or indirect information about medical information, genetic issues, and health status. If potential employers have access to this information, how can they guarantee they will not use any of this information to make hiring or employment decisions? Once the information is viewed, there is no way to go back and undo what the employer has learned. This is perhaps, the largest employment risk associated with reviewing online profiles on candidates.

Potential liability arises when an employer uses the information found via social media to affect hiring and or employment decisions. For example, an employer is getting ready to make Sarah an offer, and suddenly finds Sarah's online profile and clearly sees she is pregnant. The employer may change the hiring decision based on the online information, which is illegal. In addition, the employer may have been able to determine Sarah's relative age, marital status, race and even religious and political affiliation. Employers making employment decisions based on information related to protected classes may be a violation of state, local, and federal laws.

Conversely, if the employer makes a poor hiring decision, the city could be accused of being negligent for failing to properly conduct background and pre-employment screening. With court dockets and other public information online, information on potential candidates is easier to obtain. For this reason, every city should have a policy on social networking and its use in the hiring process. Additionally, you should include in your policy if and when social media will be used in background checks and employee discipline and harassment investigations.

Discrimination laws prohibit employers from seeking out information that would disclose protected status information. If you will not ask a candidate if she/he has children in an interview, then it is not relevant to your online search either. Those with hiring or firing authority should be careful in accessing any profile that could reveal age, gender, relationship status, national origin, disability status, pregnancy status, health status etc. Employers should be following their social media policies and only consider legitimate job related information when hiring or making a decision that will impact someone's livelihood. Employers should always have a trained human resources professional administering social media background checks. Information not related to the job should not be forwarded to the hiring manager.

For human resource managers it is appealing to have a wealth of information on candidates. Viewing social media profiles can be a quick way to identify poor communication and grammar skills, offensive photos and remarks, and an exaggerated resume. However, a city must keep in mind that viewing an applicant's social media profiles may put them at risk for violating: GINA, Title VII of the Civil Rights Act, American's with Disabilities Act, the Pregnancy Discrimination Act, and the Age Discrimination in Employment Act. In addition, a city can open itself up to disparate impact and disparate treatment claims.

DISCLAIMER: The letters and publications written by the MTAS consultants were written based upon the law at the time and/or a specific sets of facts. The laws referenced in the letters and publications may have changed and/or the technical advice provided may not be applicable to your city or circumstances. Always consult with your city attorney or an MTAS consultant before taking any action based on information contained in this website.

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