

LEGAL ALERT

March 7, 2017

Facebook's New Job Posting Feature Presents Opportunities and Risks for Businesses

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Facebook recently launched a new feature for its business users allowing them to post job openings and receive applications via their Facebook Page. Facebook's new feature is likely to become a force in the job market, but businesses need to be aware of legal issues that arise from its use relative to discriminatory hiring practices and the duty to preserve information.

Facebook's direct job posting feature seeks to "Take the Work Out of Hiring" by "building new ways to help make it easier for businesses to interact with the over 1 billion people visiting Pages every month." The initial announcement may be found [here](#).

The new function will permit US and Canadian businesses to post jobs on business Pages or in the new jobs bookmark. Business Page administrators will be able to create a job post, track applications and communicate directly with applicants. After posting a job, business Page administrators will be able to review applications and contact applicants on Facebook Messenger.

Facebook states that job applicants will find the new function simple. Job posts may appear in an applicant's News Feed, in the new bookmark for jobs, and alongside other posts on business Pages. Interested applicants will click on the Apply Now button and a form will open that is pre-populated with information from their Facebook profile including at least the applicant's posted name, experience and education. Job applicants will be able to review and edit their information before submitting the form.

According to a Facebook email to business Page administrators, this new feature will permit businesses to (a) post job openings quickly; (b) share business stories with applicants; (c) review and respond to applications on the go; and (d) reach qualified people. However, the feature also shares an applicant's public profile information with the hiring business once the application is submitted. Facebook user profiles are often replete with information such as a user's likes, businesses followed, favorites, listed affiliations, and photographs that reveal user's protected characteristics. Therefore, depending on an applicant's privacy settings, the job

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application may release information to the hiring business regarding the person's religion, sexual orientation, or other protected characteristics that might not otherwise be revealed to an employer during the initial hiring process. An employer's unwitting exposure to such information potentially exposes businesses to legal claims regarding their hiring process.

The new Facebook function creates an opportunity for employers to consume information on an applicant's social media account that cannot be unseen. Moreover, once an employer reviews an applicant's online profile, the employer could have a difficult time convincing a court that the employer was not aware of an applicant's protected characteristics if a discrimination claim is made. Therefore, businesses using Facebook's job posting application will be doing so with eyes wide open and must ensure that all hiring decisions are compliant with federal and state anti-discrimination laws.

Facebook's job posting application is engineered for businesses and applicants to communicate quickly and on the go using Facebook's Messenger app. Business Page administrators should be careful to maintain a level of professionalism when utilizing an app that might have been previously used only to communicate among friends. Businesses should also be sure to save communications on the Messenger app relevant to the hiring process to protect themselves against future claims. Facebook also promises that businesses will be able to track applications using this new function. The function of this tool is not entirely known and likely to evolve over time, but businesses should be careful to ensure that the tracking record is saved for future use.

Facebook's new job posting function is likely to grow in popularity immediately. Any business using this new tool is urged to carefully consider the legal ramifications before sharing and tracking employment opportunities on their Pages and communicating with applicants on Messenger. Schenck, Price, Smith & King's Technology and Social Media attorneys as well as its Labor and Employment attorneys are available to guide businesses in utilizing this new tool.

Please contact John P. Campbell at jpc@spsk.com and/or Cynthia L. Flanagan at clf@spsk.com with any questions or concerns regarding these issues.

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