Facebook fired: Legal perspectives and young adults' opinions on the use of social media in hiring and firing decisions

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ABSTRACT

In this exploratory study, we examine young adult undergraduates' ($n = 448$) opinions regarding the use of social media for employment decisions, a practice that has been highlighted in the popular press and recent legal cases. Most of the young adults in our sample were not in support of this practice (only one third were), and most expressed a liberal view of what should be permissible for posting on social media without the threat of job termination (e.g., less than half believed that posting illegal sexual behavior online should result in termination). Additionally, those who were most opposed to using social media in employment decisions were older, had less self-control, were more endorsing of the hookup culture, and were more open to experience. We discuss these findings with regard to current social media/work life issues, suggesting that: (1) these opinions may affect companies and legal entities who are developing social media policies, but also (2) that young adults need to be aware that regardless of their opinions on the practice, their social media use could have long-term effects on their careers.

1. Introduction

In a recent Pew survey, 73% of American adults reported using the internet to engage in social networking (Duggan & Smith, 2014). Among young adults (18–29), the percentage of users is even higher: Recent surveys show that 83% of young adults use social media sites (Duggan & Brenner, 2013). And trends show no signs of a social media slow-down. In 2013, more American adults were using the most popular social networking sites (i.e., Facebook, Twitter, Instagram, Pinterest, and LinkedIn) than had in 2012, 42% of internet users indicated they used at least two of the most popular sites, and many visited the sites daily (Duggan & Smith, 2014).

Research indicates that the motivation behind individuals' use of social media is often to develop or maintain social or romantic relationships, to feel connected to others, to gain information, or to gain social capital (Bonds-Raacke & Raacke, 2010; Gangadharbatla, 2008; Nadkarni & Hofmann, 2012; Sheldon, Abad, & Hinsch, 2011; Smith, 2011). Because of the range of motivations, diversity of social relationships, and the vast quantity of subscribers, personal social media usage has inevitably become intertwined with the workplace. One recent study indicated that 60% of employees report having one or more co-worker "friends" on Facebook, and

25% of employees report that they are Facebook friends with their supervisor (Weidner, Wynne, & O'Brien, 2012). Significant issues therefore arise when content that is not professional is seen by supervisors, co-workers, or other types of professional contacts. Those issues can result in serious consequences for social media users, as well as the organizations that employ them, as evidenced by the growing number of employment disputes related to social media that have resulted in litigation.

In this exploratory study, our goals were to: (1) measure young adults' perceptions of fairness of employers' use of social media for making employment decisions, and (2) examine how personality, individual differences, and personal social media use impacts such fairness perceptions. To contextualize these findings, we include a legal perspective on the social media and work cases that have emerged in the courts, and then focus our discussion on the implications of these results for employees and organizations, emphasizing the effect these perceptions may have on future law and policy.

1.1. Social media's increased role in employment decisions: a legal perspective

Social media has had an increasingly significant impact on human resource practices and has been the basis for many recent employment decisions that have resulted in litigation. A 2013 study by Jobvite found that 93% of recruiters said they were likely

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to look at the social media profiles of applicants, and 43% have reconsidered a candidate (both in the negative and positive direction) based on the candidates' social media profile (Jobvite, 2013). With regard to existing employees, 17% of organizations report they have had issues with employees' use of social media, and 8% say they have actually dismissed a worker for a social media behavior (Ostrow, 2009).

Public opposition to this type of scrutiny often occurs when an organization fires an employee for social media conduct that appears to be unrelated to the workplace. For example, high school English teacher, Ashley Payne, was asked to resign after she posted a picture from her European summer vacation on Facebook. The picture depicted Payne smiling and holding two drinks while in an Irish pub (Payne v. Barrow County School District & (Super. Ct. Ga., 2009). Meanwhile, middle school teacher, Anna Land, was fired after a picture of her was posted (and subsequently taken down) by an unknown third party. The picture showed Land in a simulated sexual act with a male mannequin while at a bachelorette party (Land v. L'Anse Creuse, 2010). These are just two of a number of incidents where employees have been fired for posts that have been placed on social media sites. The popular press has coined the term, "Facebook Fired," to refer to the growing number and type of incidents that have arisen across all professions (Hidy & McDonald, 2013). However, K-12 public school teachers, such as Ashley Payne and Anna Land, have been particularly hard hit as a profession, since the general perception is that teachers should be held to a higher moral standard than other types of professionals (Fulmer, 2010; McNee, 2013; Miller, 2011).

There is very little legal protection afforded to teachers' online communication under the First Amendment in these cases. As public sector employees, the long-standing legal standard is that their speech is protected from adverse employment action only if it involves a matter of "public concern" (matters of political, social, or other concern to the community) (Pickering v. Bd. of Ed., 1968). Meanwhile, private sector employees have almost no First Amendment protection from employer discipline for their online communications, though some protection to discuss the terms and conditions of their employment comes from the National Labor Relations Act (Fulmer, 2010; Raphan & Kirby, 2014).

Negative reaction from the public has resulted in some legal protection for employees by way of state law. For example, a common practice had emerged where employers were asking employees' and/or recruits for their social media usernames and passwords (McFarland, 2012). Legislatures in nearly twenty states have recently enacted laws to prohibit employers from engaging in this behavior, and many more states have legislation pending on this issue (Stinson, 2014). Also, some states are now requiring school corporations to implement social media policies in an effort to define and curtail "inappropriate" teacher online activity (DiMarzo, 2012). Though some other types of employers have developed crucial social media policies to deal with issues involving employee's social networking practices, studies show that 57% have not (Mulvey, 2013). Many personal social media usage issues therefore remain undefined for employees as they relates to their workplaces (Protivity, 2013). The laws and policies regarding social media-based terminations of employment are still evolving and are being shaped by societal notions of justice and fairness.

1.2. Existing research on social media, psychological characteristics, and employment decisions

In the empirical literature on the topic, there are currently no known studies that have measured societal opinions of the use of social media for employment decisions. However, a few researchers have attempted to connect social media use, personality characteristics, and employment-related outcomes. In one of the first studies in this area, Karl, Peluchette, and Schlaegel (2010), surveyed American and German undergraduates to determine the frequency with which young adults posted problematic material (e.g., drug and alcohol use or sexual behavior) online and how this related to individual personality characteristics. Karl et al. (2010) found that a fair number of young adults, more Americans than Germans, indicated that they had posted different types of problematic material online. Undergraduates who were more conscientious, agreeable, and emotionally stable were less likely to post problematic material online, whereas those who had greater internet compulsivity were more likely to post such material online (Karl et al., 2010). In the discussion of their results, Karl et al. (2010) connected their findings to employment decisions, suggesting that these internet profiles may be used by employers to make hiring decisions during the recruitment and selection processes.

Stoughton, Thompson, and Meade (2013) took this work a step further by examining the relationships between personality characteristics and potentially damaging online behaviors in a pool of actual job applicants. In their study, college students who were more extraverted were more likely to reference alcohol and drugs in posts. Additionally, those who were less agreeable were more likely to badmouth others (e.g., coworkers, classmates, professors, or superiors) in posts; whereas those who were more conscientious were less likely to badmouth others (Stoughton et al., 2013). Stoughton et al.'s (2013) study provided further evidence that there is a link between a person's psychological characteristics and their potentially damaging online behavior. Again, these authors connected their findings to employment decisions, suggesting that some employers may already use social media sites to screen potential applicants, and that Facebook profiles may have the potential to provide valuable information to employers about the psychological characteristics of job applicants.

Notably, although both Karl et al. (2010) and Stoughton et al. (2013) suggested that social media profiles might be useful to employers to help make decisions about job applicants, neither examined applicants' opinions about this process. Buy-in from job applicants and employees on these issues may lessen the likelihood of litigation; therefore, it is important from both a practical and legal perspective to understand what these opinions are and which types of individuals hold these opinions.

1.3. Opinions of use of social media for employment decisions: the current study

As social media is being used in employment decisions (e.g., Jobvite, 2013), but social media policies are still mostly non-existent or in flux (Mulvey, 2013), public opinions about these practices may help to shape future policy. Opinions about the appropriateness of using social media profiles in employment decisions are likely shaped by both individual characteristics, like the Big-5 characteristics examined in Karl et al.'s (2010) and Stoughton et al.'s (2013) studies, as well as societal factors, such as the proliferation of social media use in the culture.

With regard to Big-5 traits, we expected that psychological openness would affect opinions on the use of social media for employment decisions. Psychological openness is one of the five key personality dimensions according to the five factor model (e.g., Costa & McCrae, 1992; Digman, 1990). McCrae (1996) defines openness as a broad but complex personality dimension which encompasses both intrapsychic and interpersonal dimensions. Those who are high in openness to experience are creative and flexible thinkers, who are open to new experiences and are intellectually curious (McCrae, 1996). With regard to the present inquiry, we hypothesized [H1] that those high in openness would be more likely to *oppose* the use of social media for hiring and firing decisions, as they would be more likely to accept a wider variety of