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PRIVACY & INFORMATION SECURITY AND LABOR & EMPLOYMENT UPDATE

Be Careful Who You 'Friend': Employers Hiring in Germany and the EU Must Be Cautious When Internet Searching a Candidate

The European Union has strict privacy laws that extend a range of protections to employees. But new pending legislation in Germany may extend the broadest protection yet to include even job applicants. It is not uncommon for employers to search the web for background information on a potential job candidate. Lawmakers in Germany are going a step further by proposing stiff penalties on employers who go beyond searching public postings. The proposed law would prohibit an employer from tapping into Facebook or other similar social media sites and 'friending' a candidate just to obtain information on their background. Embarrassing confessions and photos that might influence an employer not to hire an applicant would no longer serve as justifiable grounds for refusing to make a job offer. The law, however, does carve out an exception for work-related networking sites such as LinkedIn, and would not prohibit the employer from internet research on public sites such as Google. The law also prohibits conducting video surveillance of employees in private spaces such as locker rooms and restrooms. Further, the proposed law mandates that companies will only be able to monitor employees' telephone calls and e-mails under certain conditions. Companies will be required to inform their employees that they may be monitored. In addition to potential fines, the proposed law gives employees and job applicants the right to sue the employer for every violation.

The law has been endorsed by German Chancellor Merkel's cabinet and now heads to the Parliament for a vote where it is expected to pass. Interestingly, Germany is not alone in addressing employee privacy. Other EU countries such as France and Italy impose significant protections on personal privacy including email communications and disclosures of employee names. These EU countries have stiff penalties and fines for employers who violate the privacy laws. While the United Kingdom has not strictly prohibited internet sleuthing on an employee's background, guidelines from the British Information Commissioner's Office state that an employer should disclose to a prospective candidate all the websites it will search to obtain background information.

While web searching is a new and sometimes effective tool for human resources professionals in the US, the European laws do raise a caution flag. U.S. employers should be aware that in conducting a web search to obtain background information, they could inadvertently discover the age, religion, sexual orientation or genetic information of a candidate posted on a social networking site. Acquiring this information, even inadvertently, could put an employer at risk if it must defend itself later in a discrimination suit brought by an applicant or employee.

FOR MORE INFORMATION

For more information on this legislation or other employee privacy issues please contact your Thompson Hine lawyer or:

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