ADA Audio Conference Series
April 15, 2014

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2:00pm Eastern Time

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Customize Your View

- Resize the Whiteboard where the Presentation slides are shown to make it smaller or larger by choosing from the drop down menu located above and to the left of the whiteboard. The default is “fit page”
Customize Your View continued

- Resize/Reposition the Chat, Participant and Audio & Video panels by “detaching” and using your mouse to reposition or “stretch/shrink”. Each panel may be detached using the icon in the upper right corner of each panel.

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- Depending on your system settings you may receive visual and audible notifications when individuals enter/leave the webinar room or when other actions are taken by participants. This can be distracting.

- To turn off notifications (audible/visual)
  - Select “Edit” from the tool bar at the top of your screen
  - From the drop down menu select “Preferences”
  - Scroll down to “General”
    - select “Audible Notifications” Uncheck anything you don’t want to receive and “apply”
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  - For Screen Reader User – Set preferences through the setting options within the Activity Window (Ctrl+ slash opens the activity window)
Technical Assistance

If you experience any technical difficulties during today’s session:

1. In webinar platform: Send a private chat message to the host by double clicking “Great Lakes ADA” in the participant list. A tab titled “Great Lakes ADA” will appear in the chat panel. Type your comment in the text box and “enter” (Keyboard - F6, Arrow up or down to locate “Great Lakes ADA” and select to send a message ); or
2. By Email webinars@ada-audio.org; or
3. Call 877-232-1990 (V/TTY)
Woman earn only 78% of what men earn.

The unemployment rate for veterans who served on active duty in the U.S. Armed Forces at any time since September 2001—a group referred to as Gulf War-era II veterans—was 12.1 percent in 2011.
Generation X and Y make up over 50% of the workforce.

For the first time ever, there are 5 generations at work at the same time.

Applicants and is everyone getting the true picture
Can I Google Applicants?

Yes you can*

...* BUT During this session we want to look at more:

- What’s legally allowed to search when investigating a candidate
- The return on investment of online screening
- The current "case history" that might motivate a social media search risk
- New tools and methods for analyzing information found

What’s in your “backpack”

- It’s what we “bring”
- It’s who I am
- It’s my “stuff”
Generational Groups

- Traditionalists (prior 1945)
- Baby Boomers (1946-1963)
- Generation X (1964-1980)

Workplace Dynamics?

- Define these terms
  - Team player
  - Effective communication
  - Appropriate
  - Casual
  - Person with a disability
Protected Federal Categories

- Race
- National Origin
- Color
- Genetic Information
- Religion
- Disability
- Sex
- Age 40+

There are about 540,000 words in the English language...
about 5X as many as during Shakespeare’s time.

More than 3,000 new books are published every day
Is Social Media A Fad?

http://www.youtube.com/watch?v=lFZ0z5Fm-Ng&feature=autofb

The Digital Age

Welcome to the Virtual World of:

- “Friends”: Facebook & Instagram
  - Mostly social, but growing business network

- “Connections”: LinkedIn
  - “Facebook in a suit”

- “Followers”: Twitter
  - Instant messaging on steroids
There are over 1 billion registered users of Facebook.

If Facebook were a country, it would be the 3rd largest in the world (Between India and U.S.)

And this does not include or
Why employers Google …. 

To ensure the best fit between the applicant and the organization

To find candidates with characteristics that will maximize work productivity and minimize costs and liability

Internet Never Forgets…

- Stacy Snyder
  - 1st Amendment does not cover photos

- Internet records everything and forgets nothing

- Every online photo, Facebook status update, Twitter post and blog entry by and about us can be stored forever

Drunk’in Pirate
Obligations of Employers

- Make the **workplace free of unlawful** discrimination, harassment and retaliation

- Promptly and confidentially **investigate** complaints of discrimination, harassment and retaliation

- Where discrimination, harassment and retaliation may have occurred, **take prompt and appropriate remedial action** (i.e., discipline commensurate with the offense)
Googling Job Applicants

April 15, 2014
Twitter

- 200 million users
- Library of Congress did you know
  - will be acquiring and permanently storing the entire archive of public twitter posts since 2006

IMPORTANCE OF POLICIES

- "Twoosh" is a word invented to describe Twitter messages that contain exactly 140 characters.

- Our Twitter policy: (in 140 characters)
  Be professional, kind, discreet, authentic. Represent us well. Remember that you can’t control it once you hit "update."
HR Statistics

- 75% of U.S. recruiters are required by their companies to do online research of candidates
- 70% of U.S. recruiters report they have rejected candidates because of information found online

SCREENING TOOL FOR JOB APPLICANTS

- 65 percent of hiring managers “Google” applicants
- 65 percent check social networking sites
- 50 percent of these searches result in job rejections
PROBLEM ISSUE

Employer will potentially have access to information such as involvement in a stakeholder group, people with disability organization, sexual preference, cultural and religious identification.
4th Amendment

- Fourth Amendment
  (unreasonable searches and seizures)
- Common Law
- Electronic Communications Act of 1986
- Federal Stored Communications Act

To Like or Not Like...

- Does clicking the “Like” button on Facebook constitute “concerted activity”?
  - Hispanics United of Buffalo Inc. Decision

- Is a Facebook “Like” constitutionally protected?
  - Bland v. Roberts
**EVOLUTION: O’Connor v. Ortega**

- **U.S. Supreme Court** first recognized Fourth Amendment privacy protection in pre-Internet 1987.
- Employee's privacy expectations could be shaped and restricted by the employer's policies and practices.
- **HELD:** employee had a legitimate expectation of privacy in his desk and file cabinets.

**CITY OF ONTARIO V. QUON (2010)**

- **ISSUE:** Whether a public employee (a police officer and a SWAT team member) stated a claim for violation of Fourth Amendment rights where the public employer (a police department), reviewed texts sent and received by Quon on his department issued pager.
**Takeaway**

Every employer, whether public or private, must have clearly drafted policies giving employees notice that they have no expectation of privacy in company electronic equipment, whether this be in emails, phone log details or text messages.

**ELECTRONIC COMMUNICATIONS PRIVACY ACT OF 1986**

- **Primary federal law addressing privacy concerns is the ECPA.**
- **Exceptions interpreted to mean that if employer maintains its own email system and assumes “provider status,” employer is allowed to retrieve all stored email messages.**
- **Two types of communications:**
  1. Messages in transit (happens in seconds – limited opportunity for interception)
  2. Stored messages (most typical work scenario)
Passwords to Avoid

- SplashData’s list of the 25 most common passwords found on the Internet.
- Here are the top worst passwords to use:
  - 123456
  - Password
  - 12345678
  - Qwerty
  - Abc123
  - iloveyou (#9), trustno1 (#24), monkey (#17).

Federal Stored Communications Act

- “Wiretapping Act”
- Criminal Offense to Intentionally:
  (1) Access, without authorization, a facility through which an electronic communication service is provided; or
  (2) Exceed an authorization to access that facility.
TAKEAWAY

Do not gain access to employee’s website by either receiving private information through another “friend,” or by going through a person on the employee’s “friends” list.

ISSUES ARISING FROM MONITORING EMPLOYEES (applicants next?)
Positive Treatment of Monitoring

Upheld firing of employee who transmitted inappropriate emails; Held: Company’s interest in preventing inappropriate and unprofessional comments or even illegal activity over email outweighs employee’s privacy interests.

HOT TOPIC – Interference in Union Organizing Activities or “Concerted Actions”

Employee Rights
Under the National Labor Relations Act

The National Labor Relations Act (NLRA) guarantees the right of employees to organize and bargain collectively with their employers, and to engage in other protected concerted activity or to refrain from engaging in any of the above activity. Employees covered by the NLRA are protected from certain types of employer and union misconduct. This Notice gives you general information about your rights, and about the obligations of employers and unions under the NLRA. Contact the National Labor Relations Board (NLRB), the Federal agency that investigates and resolves complaints under the NLRA, using the contact information supplied below, if you have any questions about specific rights that may apply in your particular workplace.

Under the NLRA, you have the right to:
- Organize a union to negotiate with your employer concerning your wages, hours, and other terms and conditions of employment,
- Form, join or assist a union,
- Bargain collectively through representatives of your choosing for a contract with your employer setting your wages, benefits, hours, and other working conditions,
- Discuss your wages and benefits and other terms and conditions of employment or union organizing with your co-workers or a union,
- Take action with one or more co-workers to improve your working conditions by, among other means, raising work-related complaints directly with your employer or with a government agency, and seeking help from a union,
- Strike and picket, depending on the purpose or means of the strike or the picketing.

Under the NLRA, it is illegal for your employer to:
- Prohibit you from talking about or soliciting for a union during non-work times, such as before or after work or during break times, or from distributing union literature during non-work time, in non-work areas, such as parking lots or break rooms.

Under the NLRA, it is illegal for a union or for the union that represents you in bargaining with your employer to:
- Threaten or coerce you in order to gain your support for the union.
NLRB VIEW

Monitoring employee’s social networking activity has the potential of creating a chilling effect on the employees’ communications regarding the terms and conditions of their employment, in violation of the NLRA at 29 U.S.C. § 157.

KNAUZ BMW (May 24, 2011)

- NLRB alleges unlawful termination of an employee for posting photos and comments on Facebook that were critical of dealership
- Unhappy with quality of food and beverages at a BMW promotion event
- Again non-union: “concerted activity” because it involved a discussion among employees about the terms and conditions of their employment
Best Practice Advise: Create Written Acceptable Use Policies ("AUP")

By creating and consistently applying policies informing employees that their use of corporate networks, including email access, can be monitored, the employee has waived his/her right to privacy in communications made on the company's network.

Basic Contents

• Urge employee to take work-related complaints to HR before blogging or posting about them

• Clarify that discipline will be imposed, up to and including termination, if an employee misuses social networking sites relating to employment or other employees in the context of employment

• Establish a reporting procedure for suspected violations and also reiterate that company's anti-discrimination policies also apply to electronic communications

• Remind employees that computer and email systems are not private and that company may monitor computer, email and/or text messaging usage
Basic Contents

- Require employees to sign a written acknowledgment form affirming that they have read, understand and will abide by the company's acceptable use policy
- Prohibit unauthorized transmission of corporate trade secrets and other confidential information
- Define discipline to be imposed for transmitting or receiving communications containing pornographic, derogatory, defamatory, sexual, racist or harassing statements
- Define whether email is automatically deleted after a specific time period

Basic Contents

- Define whether online shopping, surfing, gambling or stock trading is allowed
- Describe when and how the Internet may be used during the workday and/or after work hours on company equipment
- Define penalties for violating the AUP
- Enforce this policy consistently and indiscriminately
Permanency of Information

- Viktor Mayer-Schönberger
  - A society in which everything is recorded will forever tether us to all actions, making it impossible, in practice, to escape them.
  - Without some form of forgetting, forgiving becomes a difficult undertaking

- No second chances
  - Worst thing you have done is the first thing people will know about you

Ways to Protect Your Image

- Be careful.
  - Do not post anything on any site that you would not want a potential employer to see.

- Be discreet.
  - Set your profile to private and block inappropriate comments that others may make on your profile.

- Be prepared.
  - Regularly check your profile for inappropriate content. Make sure you have an answer ready to explain or counter any “digital dirt” employers may see.
When It Becomes Illegal

- When employers base their hiring decision on an applicant's protective status
- When information discovered leads to employer’s knowledge of information that would be illegal to use against an applicant in a hiring decision
  - i.e. discovering an applicant was arrested and using that to disqualify
  - Things you cannot ask in an interview are the same things employer cannot research

Questions To Ask When Using Social Media…

- Is it valid?
  - Does the information predict job performance?
  - Is the information job-related?

- Is it legal?
  - No laws have been passed yet
  - Information posted on the internet is considered “public domain”
  - Opens organization up to “perception” of using protected information

- Is it worth it?
Ways to Protect Yourself…

- Add “off-duty conduct” policy
- Check organization’s “cyber reputation”
- Check employees’ “cyber reputation”
- Advise caution among employees when posting things on the internet
- Social networking policies for their employees while at work, while using employer equipment/facilities, or that will reflect directly on the employer.

What is eDiscovery?

- The legal discovery of electronic documents and data
  - eMail, web pages, word processing files, spreadsheets, meta data, databases, backup tapes, cache memory, hard drives, thumb drives, PDAs, firewall/IDS logs, phone call logs, IM transmissions, etc.

⇒ Anything outside of the traditional discovery of writings or business records on paper is “eDiscovery”
Unique Problems With Social Networking Activities

- Blurring of lines between “work” and “personal”
- No “filter” or “edit”
- Reach a vast audience
- Immediate public viewing
- Quicker and less “formal” = users are less guarded and careless

Background Checks

- Two circumstances employers will meet “job relatedness and consistent with business necessity”
  - The employer validates the criminal conduct screen for the position in question
  - The employer considering at least
    - 1) the nature of the crime,
    - 2) the time elapsed, and
    - 3) the nature of the job,
CRIMINAL BACKGROUND CHECKS

**Individualized Assessment**

Consider each person’s record based on the potential risk in the particular position.

### MITIGATING FACTORS

- Marriage
- Education
- Successful Employment History
- Age at time of release or conviction
- Rehabilitation Efforts
EEOC Strategic Enforcement Plan (SEP)
Nationwide Priorities:

I. Eliminating systemic barriers in recruitment and hiring.

- **Barriers:**
  - exclusionary practices and policies
  - Steering individuals into jobs based on protected category
  - Restrictive application processes
  - Use of screening tools with adverse impact

II. Protecting Immigrant, migrant and other vulnerable workers

- **Target:**
  - Disparate pay
  - Job segregation
  - Harassment
  - Human Trafficking
  - Discriminatory Language Policies
III. Address emerging issues

- Issue 1 - ADAAA

- Issue 2 - LGBT
  - Coverage under Title VII provisions

- Issue 3 – Pregnancy
  - Women being forced onto unpaid leave after being denied accommodations

IV Enforcing Equal Pay Act

The next Equal Pay Day is April 9, 2014.

This date symbolizes how far into 2014 women must work to earn what men earned in 2013.
V. Preserving access to the legal system

- **Barriers:**
  - Policies and practices intended to discourage or prohibit the exercise of rights under discrimination statutes or impede EEOC Investigation.

VI. Combating harassment

- **Basis for harassment:**
  - Race, Color, Ethnicity, Religion, Sex, Age, Disability
  - *National Education & Targeted Outreach*
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Frequently Asked Questions

Below are a list of frequently asked questions. Should you have further questions unanswered in this FAQ, feel free to contact us.

You may contact us via our contact page, or pick up the phone and call.

Is what you are doing legal?

In short, yes. Although people may find this type of act to be unethical; it is legal as long as you are not trying to defraud or fabricate yourself to your local, state, or federal government.

Can I go to jail or get arrested for this?

If you’re doing this for employment or for renting a place to live, no. However, if you are trying to deceive any government agency, you may well get fired and thrown in jail. This is why we only offer this service for personal endurance. Any place that is not government run is eligible.

Can I get a mortgage with this service?

We will not provide employment references or help in any way to get you a home. That is illegal.

How real does my “previous employment” look when you’re all done?

When we get done with your project, you will have a very professional website and business contact that no one will be able to tell apart. Don’t worry.

How long does it take once we get started?

Typically, the process takes about 3-5 business days depending on which package you choose and how involved we get.

Should I get a toll free number or a local number?
What is truth?
Finished files are the result of years of scientific study combined with the experience of many years of experts.

Is your perception …. Sometimes your truth?

- Sometimes we have to take another look at what we think we know
Any Questions, Comments, Concerns or Complaints

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or  

EEOC Training Institute  
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Thank you for participating in today’s ADA-Audio Conference Session

The next scheduled session is:

“Electronic Information & Digital Access: Update on Compliance Activities and Enforcement Activities”

May 20, 2014

www.ada-audio.org  877-232-1990 (V/TTY)