

ADA  AUDIO
Conference
ADA NATIONAL NETWORK

ADA Audio Conference Series
April 15, 2014

This session is scheduled to begin at
2:00pm Eastern Time

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1

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2

Listening to the Webinar, *continued*



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3

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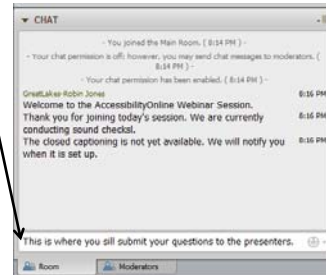


4

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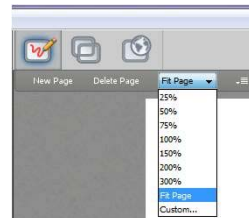
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5

Customize Your View



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Customize Your View *continued*



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7

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 - From the drop down menu select “Preferences”
 - Scroll down to “General”
 - select “Audible Notifications” Uncheck anything you don’t want to receive and “apply”
 - Select “Visual Notifications” Uncheck anything you don’t want to receive and “apply”
 - For Screen Reader User – Set preferences through the setting options within the Activity Window (Ctrl+ slash opens the activity window)

8

Technical Assistance



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 2. **By Email** webinars@ada-audio.org; or
 3. **Call** 877-232-1990 (V/TTY)

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ADA  AUDIO
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Googling Job Applicants

Joe Bontke
Outreach Manager and Ombudsman
EEOC Houston

April 15, 2014

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**Woman
earn only
78% of what
men earn**

WOMEN
Like men,
only cheaper.



**IF YOU DON'T LIKE IT,
HELP US RIGHT IT.**

11

- 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



**WE'RE STILL FIGHTING
BUT THIS TIME,
FOR A JOB**

12

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.

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The Google logo, consisting of the word "Google" in its signature multi-colored font (blue, red, yellow, green, red, blue).

Applicants and is everyone getting the true picture

Google Search

I'm Feeling Lucky

14

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*

15

What's in your "backpack"

- It's what we "bring"
- It's who I am
- It's my "stuff"



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Generational Groups

Traditionalists (prior 1945)

Baby Boomers (1946-1963)

Generation X (1964-1980)

Generation Y (1981-2000)

17

Workplace Dynamics ?

- *Define these terms*
 - **Team player**
 - Effective communication
 - Appropriate
 - Casual
 - **Person with a disability**

18

Protected Federal Categories

Race



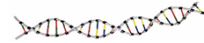
National Origin



Color



Genetic Information



Religion



Disability



Sex



Age 40+

19

**There are about 540,000 words
in the English language...**



about 5X as many as
during Shakespeare's time.



21

More than 3,000 new books
are published every day



22

Is Social Media A Fad?

<http://www.youtube.com/watch?v=IFZ0z5Fm-Ng&feature=autofb>

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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



twitter

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



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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

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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)

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Google

Joe Bontke

Google Search I'm Feeling Lucky

EEOC Training Institute ...Learn from the Experts

31

Windows Internet Explorer

facebook.com/#1/groups/53959430982/

EEOC Outreach & Education

Open Group

108 Members 2 Photos Docs

Write Post Add Photo / Video Ask Question

Write something...

Joe Bontke

If you or someone you know has the "know how" in developing apps here is a great opportunity. The Equal Pay App Contest is aimed at encouraging private software application developers to come up with an application that people can download onto their smart phones to help them better understand the pay gap and how to avoid being a victim of the pay gap. People can learn more about the contest and the expectations for the application here: <http://equalpay.challenge.gov/>

Equal Pay App Challenge

equalpay.challenge.gov

The National Equal Pay Task Force wants your help in building innovative tools to educate the public about the pay gap and promote equal pay for women.

Like Comment Unfollow Post Share 2 seconds ago

UPDATED POSTS

Joe Bontke

The U.S. Equal Employment Opportunity Commission (EEOC), is pleased to announce the release of the agency's DRAFT Strategic Plan for fiscal years 2012-2016 for your review and comment. The draft Plan is available for review on our website at http://www.eeoc.gov/eeoc/plan/strategic_plan_12to16_DRAFT_cfm and is being circulated for input from the general public as well. The EEOC has served

Members (108)

EEOC's outreach programs provide general information about the EEOC, its mission, the employment discrimination laws enforced by EEOC and the charge/complaint process. EEOC representatives are available on a limited basis at no cost to make presentations and participate in meetings, conferences and seminars with employee and employer groups, professional associations, students, non-profit entities, community organizations and other members of the general public.

Who else should be in this group?

Add Friends to Group

Sponsored

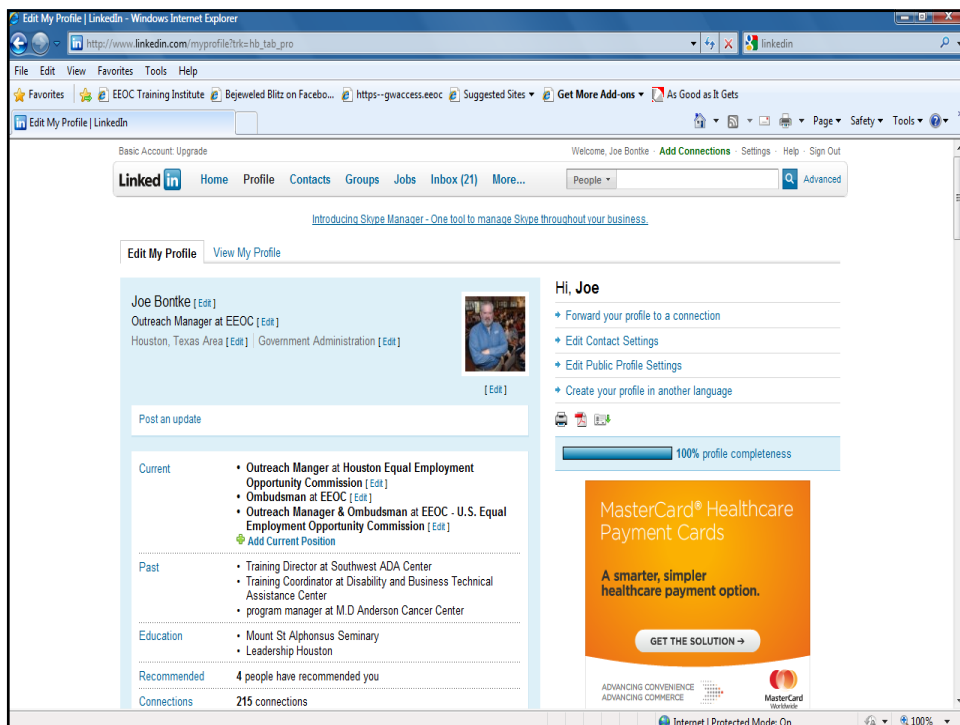
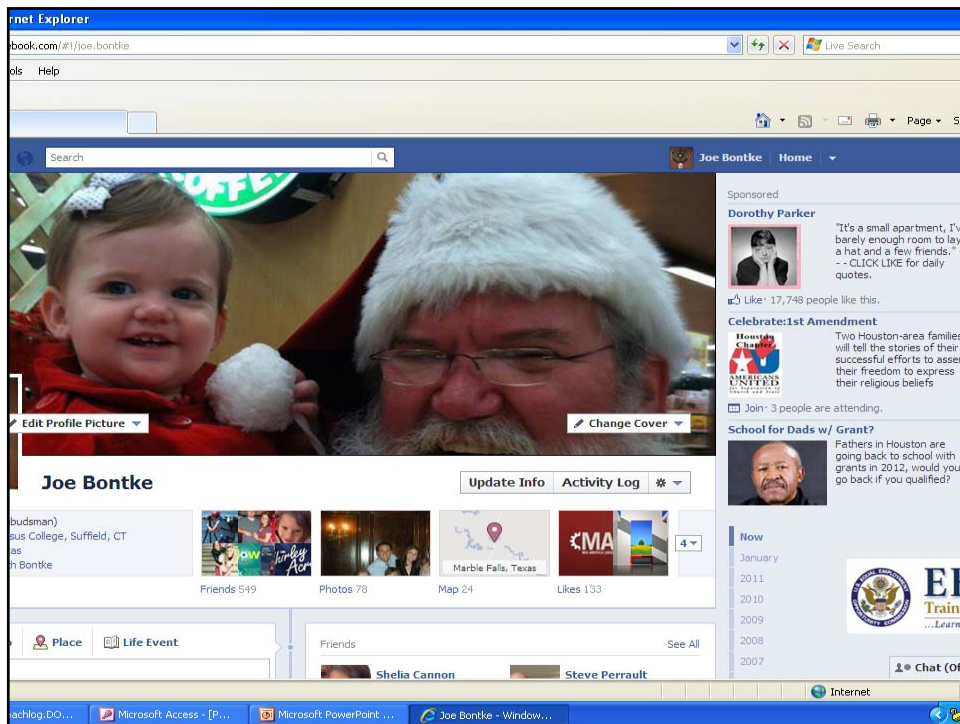
Friends of Larry Taylor

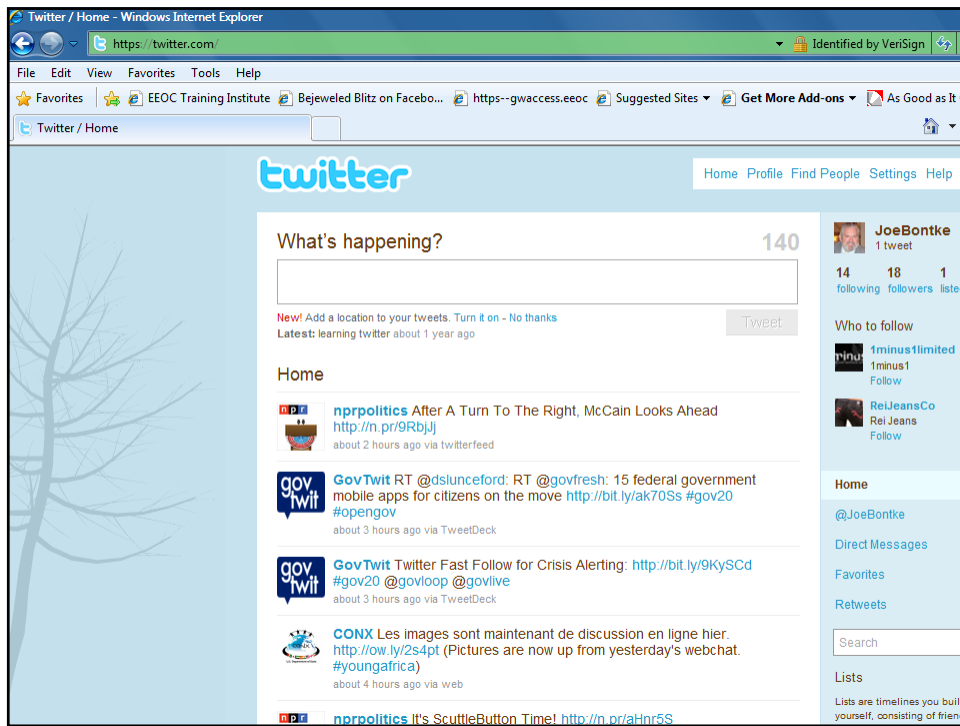
Proven Effective Conservative Leadership for Texas. Join my campaign now!

Like Kristina Hoesl Koncaba likes this.

Internet

Microsoft Access... Bontke EEOC risk... EEOC Outreach &... Novell GroupWise... Mail From: JOE B... Equal Pay App Ch...





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*



twitter

7

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."



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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**



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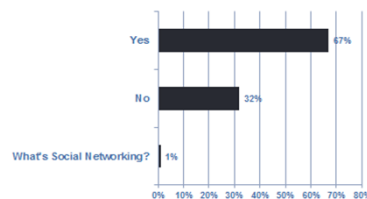
SCREENING TOOL FOR JOB APPLICANTS

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



World's Scariest Employment Law Questions

Do you currently use a social networking tool?



©2011 SHRM/HRM



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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.



fox
marks Yahoo! Tools Help

photo.php?fbid=4776665742738set=a.477665629273.280227.5008492738&type=1&theater

SEARCH

Joe Bontke
October 3, 2010
On your timeline · Remove

Add a description
(With Joyce Smith Bontke, Jacqueline Bontke, Jord Bontke, Madison Rancatore, Jillian Bontke Bowman and Zach Bowman.)

Tag Photo Add Location Edit

Like · Comment · Unfollow Post · Share · Edit

Brigette Bain Martin and Kim Vidor like this.

Karla Jensen McCabe Great picture.
October 3, 2010 at 3:17pm · Like

Angela English "Team Mamie" looks like a winning Team!
October 3, 2010 at 5:24pm · Like

Write a comment...

Social Media.ppt Bontke EEOC/risk ma... Joe Bontke - Mozilla F...

4th Amendment _____

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



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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.**



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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.**



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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.



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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)**



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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).

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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.**



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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.



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ISSUES ARISING FROM MONITORING EMPLOYEES (applicants next?)



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Positive Treatment of Monitoring

Smyth v. Pillsbury (E.D. Pa. 1996):

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.

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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 employees' own 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.
- Choose not to do any of these activities, including joining or remaining a member of a union.

Under the NLRA, it is illegal for your employer to:

- Prohibit you from talking about or soliciting for a union during non-work time, 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.



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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

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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.



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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

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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

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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

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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

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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.

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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**

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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?**

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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.

65

- 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”**

An **intrusion detection system** (IDS) is a device (or application) that monitors network and/or system activities for malicious activities or policy violations.

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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

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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 ,



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CRIMINAL BACKGROUND CHECKS **Individualized Assessment**

*Consider **each** person's record based on the potential risk in the particular position*

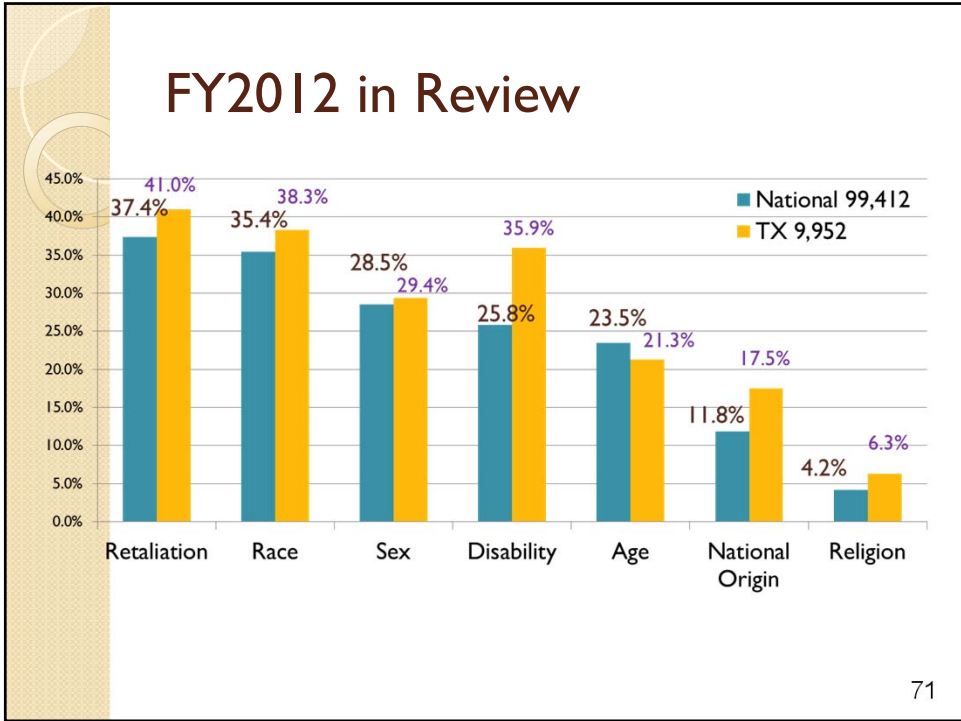
MITIGATING FACTORS

- Marriage
- Education
- Successful Employment History
- Age at time of release or conviction
- Rehabilitation Efforts

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BE MINDFUL ABOUT STEREOTYPES!
ONLY ONE OF THEM IS A CONVICTED FELON.



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Usage Statistics		In The News		How Does It Work?	
Total Users	19,179,231	<p>"Think of it as a community based high-tech early warning system" Continue</p>	<p>"Essentially a cell-phone social network that allows motorists to hook up with one another" Continue</p>		<p>Users submit speed traps, enforcement cameras, and hazards, that then alert all users in the area. A high-tech network of flashing your headlights drivers of potential road hazards.</p>
New Users Today	5,242				
Traps Reported	6,622,181				
New Traps Today	1,899				

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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



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II. Protecting Immigrant, migrant and other vulnerable workers

□ **Target:**

- Disparate pay
- Job segregation
- Harassment
- Human Trafficking
- Discriminatory Language Policies



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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



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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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A screenshot of the reputation.com website. The browser address bar shows "https://www.reputation.com/myreputation?utm_source=google&utm_medium=cpc&utm_term=o Reputation.com, Inc." and the search bar contains "cyber reputation". The website header includes the reputation.com logo, a phone number "888.919.9312", and a shopping cart icon with "0 items" and a "Member login" link. A navigation menu contains "Products", "About us", "Resource center", and "Contact us". Below this is a secondary menu with "All products", "MyPrivacy*", "MyReputation*", "ReputationDefender*", and "For Business". The main content area has two tabs: "Individuals" (selected) and "Businesses". Under "Individuals", there is a graphic of five business suits and the heading "Promote yourself on the Internet." followed by the text "Create and establish an online presence — look better to HR directors, loan officers and romantic prospects." Below this are three columns of text: "Get your own online presence easily. Establish yourself online without the trouble and cost of learning any code, creating your own sites or paying for Web hosting.", "Monitor and manage your reputation. Keep tabs on how you look from a personal, web-based dashboard — get alerts when content about you appears on the Internet.", and "Track your online popularity. Gauge your visibility and search activity — learn how many people are looking for you how often, and from what location." At the bottom, it says "Call us toll-free today for a free consultation: 888.919.9312" and "Our California-based reputation experts are available 24/7 and typically answer calls in an average of 15 seconds." The bottom of the page is partially cut off with the text "How big an online presence do you want?*".

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AS SEEN ON **CNN** **Woman's Day**

Our Process

✔ **Step 1: Choose Your Plan** If you wish to use one of our already established companies, once you subscribe, you will be directed to our company directory with over **100 virtual firms listed to choose from** and new companies are added every week!

Our Commitment

RESUME

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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 very well can get fined 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?



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What is truth?

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**Finished files are the result of
years of scientific study
combined with the
experience of many years
of experts.**

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Is your perception Sometimes your truth?

- *Sometimes we have to take another look at what we think we know*



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Any Questions, Comments,
Concerns or Complaints

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or

EEOC Training Institute
www.eetraining.eeoc.gov



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Conference
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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
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May 20, 2014

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