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# E- EXPLOSION in the Workplace

"It has never been so difficult for me  
(HR specialist) to keep up..."

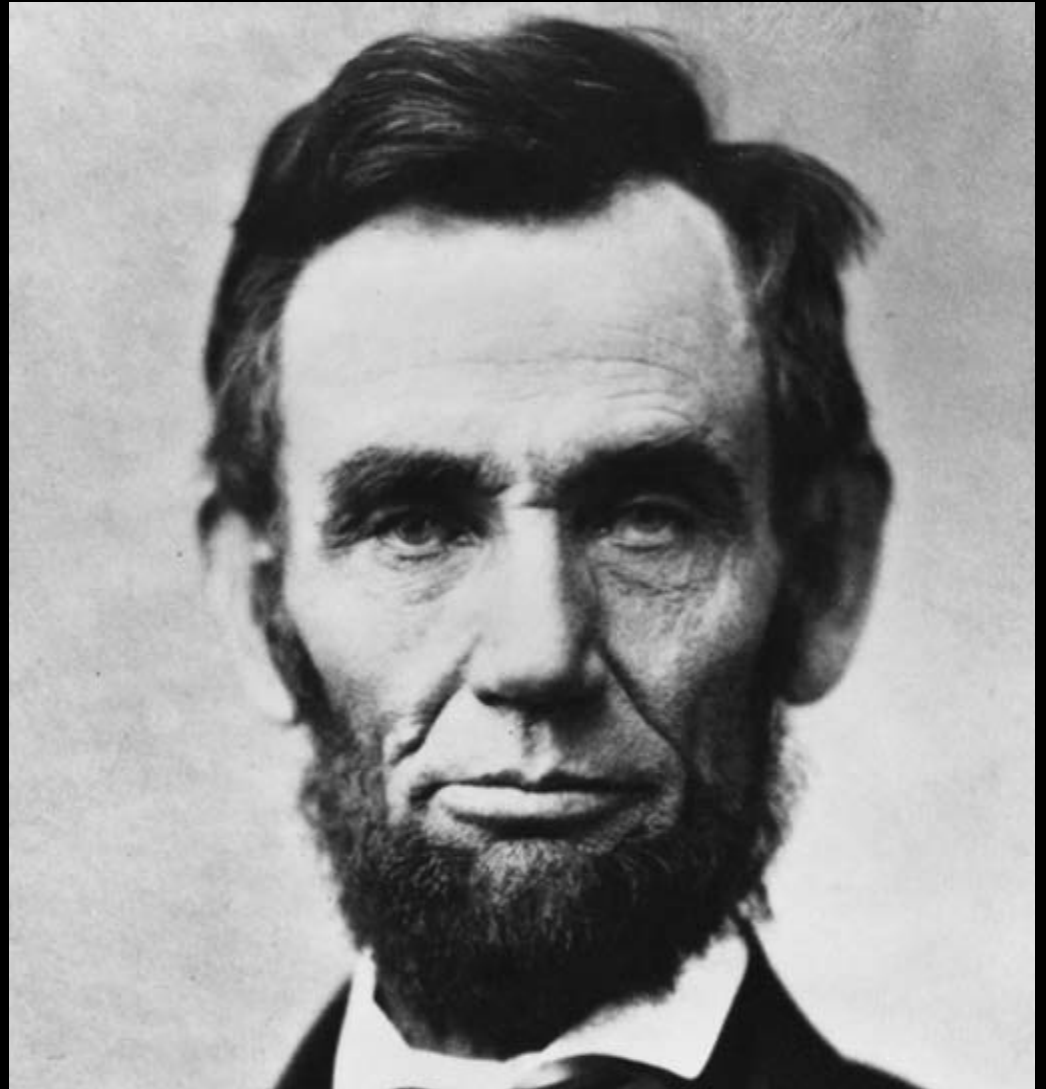
# Avoiding Electronic Chaos: Pitfalls of Social Media at Work

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Hold on with  
a bulldog  
grip and  
chew and  
choke as  
much as  
possible.




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You  Tube

 Blogger™







# Who Uses Social Networking?

- 46% of online American adults use a social networking site
- Facebook has 350 million users worldwide, MySpace has 100 million users
- Over 70 million blogs exist worldwide - 175,000 are created daily

# How are Companies Using Social Networking?

- Advertising and marketing (ESI!)
- Connecting to customers (ESI!)
- Collaboration amongst employees
- Monitoring current employees
- Screening potential employees
  - Pre-offer and post-offer

# Pre-Offer Screening

- 45% of employers use social networking sites to screen candidates
- Of those: 75% use LinkedIn; 48% use Facebook
- 35% of employers did not hire a candidate because of content found on the candidate's social networking site



# Pros of Monitoring Employees

- Access to pertinent information not readily available through other means
- Understanding your workforce
- Discovering misconduct

# *Kevin's Family Emergency*

-----Original Message-----

From: Kevin [REDACTED]

Sent: Wednesday, October 31, 2007 3:55 PM

To: Jill [REDACTED]

Cc: Paul [REDACTED]

Subject:

Paul/Jill -

I just wanted to let you know that I will not be able to come into work tomorrow. Something came up at home and I had to go to New York this morning for the next couple of days. I apologize for the delayed notice.

Kind regards,

Kevin



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Kevin's family  
emergency  
turned out  
to be a  
Halloween  
party!

# *So much for job security*

**From:** Paul [REDACTED]  
**Sent:** Thursday, November 01, 2007 4:54 PM  
**To:** Kevin [REDACTED] Jill [REDACTED] (North America); Kevin [REDACTED] (North America)  
**Subject:** RE:

Kevin,

Thanks for letting us know--hope everything is ok in New York. (cool wand)

Cheers,  
PCD



# Where the Chaos Begins

- Employment decisions based on impermissible factors
  - Race, age, disability, National Origin, etc.
- The Genetic Information Nondiscrimination Act of 2008 ("GINA")
- Stored Communications Act
- Risk of inconsistency



<http://queenofscreen.blogspot.com/>



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# \$1.25 Million Fake Online Review

- “I went to this attorney on the recommendation of a friend. He had used the father for a bankruptcy. I would be using the son to help with debt settlement. I found him to be condescending to my situation and cold in demeanor. If you are looking for a factory that turns out debt settlements then this attorney is for you. If you want someone to answer your questions and help you through a hard time in your life then find another firm!!!!!!!”



# “Use live ammunition”



- Jeffrey Cox
- Mother Jones
- Since 2004, and with name since 2006
- Don't talk about Indiana
- Uses personal email address
- Employment terminated



# “You’re damned right I advocate deadly force”

- *Garcetti v. Ceballos*
- public employees + statements x official duties ≠ First Amendment
- I think that in this day and age, that tweet was not a good idea, and in terms of that language, I’m not going to use it anymore.



# Fatty Cisco

(make your settings private)



## Fatty Cisco:

*“Cisco just offered me a job! Now I have to weigh the utility of a fatty paycheck against the daily commute to San Jose and hating the work.”*

## Cisco Employee:

*“Who is the hiring manager? I’m sure they would love to know that you will hate the work. We here at Cisco are versed in the web.”*



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- *Pietrylo v Hillstone*
- MySpace –  
“Spect-Tator”
- “Vent any BS we deal with at work”
- Stored Communications Act
- Invasion of privacy

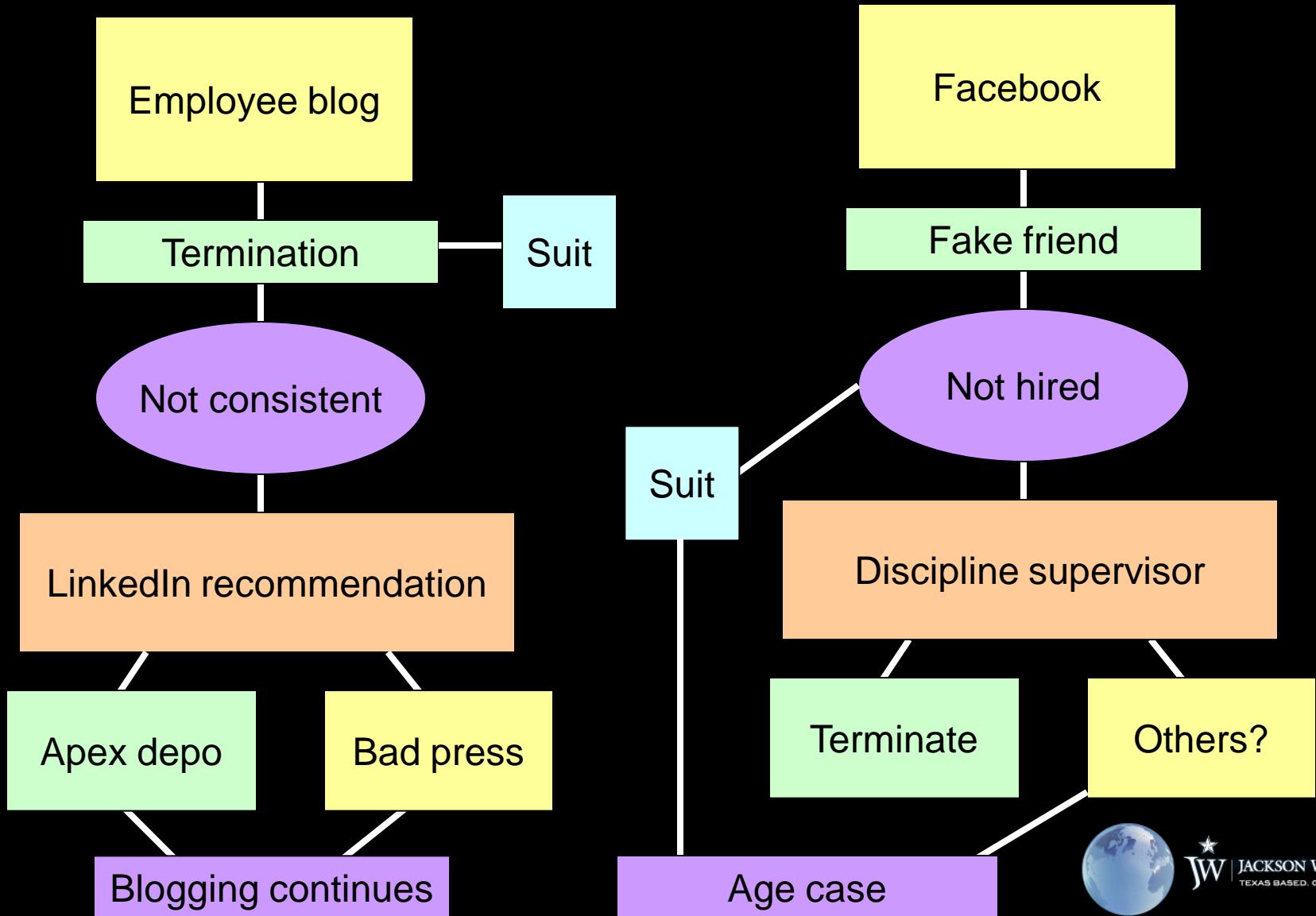


# Facebook Firing case



- Unflattering and vulgar comments about supervisor on Facebook
- “Company allows a 17 to be a supervisor”
- Oops. May discuss terms and conditions of employment w/ co-workers and others
- “Overly broad rules” in the employee handbook (wages, hours and working conditions)

# CHAOS



# MANAGING THE CHAOS

Create Social Media  
Policies and Procedures

Hiring Process

Current  
Employees

Post  
Employment  
Matters

Communicate  
Policies & Procedures

Consistent Application

Use Common Sense



# The Hiring Process

- Have a neutral party conduct the social media search
- Employee not involved in the hiring decision
- Outside third party agencies
  - Fair Credit Reporting Act considerations
- Report only information that may lawfully be considered and is relevant

# The Hiring Process *(cont.)*

- Screen applicants in a uniform manner
- Create a list of social media that will be searched for each applicant and the lawful information about each applicant wanted from the social media search
- If only a subset of applicants are screened – be consistent, objective and non-discriminatory in which subset is screened



# The Hiring Process *(cont.)*

- Employer representatives should not “friend” applicants to gain access to nonpublic networking profiles
- Be wary of content posted about a person who did not post it herself (i.e. fabricated websites)
- Disclose websites that are reviewed

# The Hiring Process *(cont.)*

- Information that can lawfully be considered:
  - Illegal drug use
  - Poor work ethic
  - Communication skills
  - Poor judgment in maintenance of online persona

# The Hiring Process *(cont.)*

- Information that cannot be lawfully considered:
  - Protected class status
- Difficult to ignore information Employer knows about

# Policy Issues

- misuse of social media can be grounds for termination
- no posting or blogging during business hours, unless for business purposes
- employees must keep company logos and/or trademarks off their blogs and profiles
- prohibition on disclosure of employers' confidential information, trade secret and proprietary information
- request that employees bring work-related complaints to human resources before blogging or posting about the complaints
- prohibit use of company email addresses to register for social media sites
- prohibition on posting false information about the company, its employees or customers



# Policy Issues *(cont.)*

- general instruction that employees take personal and professional responsibility for what they publish online
- if employee has a personal blog that identifies their employer they must include a disclaimer that the views expressed on the blog are those of the individual and not the employer
- Avoid creating an expectation of privacy
- Cyber-bullying (harassment)
- Prohibit violating any company policies
- Prohibit posting of personal information about other employees
- Employee cannot represent the employer (i.e., commenting on employer's products, whether good or bad)
- Disclaimer – Employer does not prohibit protected communication (NLRA)

# Policy Limitations

- Complaining about the employer
- Posting negative remarks about workplace conditions
- National Labor Relations Act



# National Labor Relations Act

- Applies to non-union employers
- Section 7 .... Permits employees to engage in protected concerted activities to improve working conditions such as wages and benefits
- Section 8(a)(1) .... Prohibits an employer from interfering with, restraining, or coercing employees in the exercise of their Section 7 rights

# The Problem Language (Oct. 2010 Complaint)

Employees are prohibited from “making disparaging, discriminating or defamatory comments when discussing the company or the employees' supervisors, co-workers and/or competitors.”





# Approved Language (Dec. 2009)

Prohibited subjects on social media include "disparagement of company's or competitors' products, services, executive leadership, employees, strategy, and business prospects."



# Settlement of Oct. 2010 Complaint

"Employees are allowed to discuss wages, hours and working conditions and employer will not discipline or fire employees for engaging in such activity."



# Monitoring Current Employees

- Harassment of coworkers
- Defaming employer
- Theft
- Revealing trade secret & confidential information

# Examples of Relevant Laws

- National Labor Relations Act
- Discrimination and Harassment Statutes
- Fair Credit Reporting Act
- Privacy Laws
- Stored Communications Act

# Issues Specific to Supervisors and Managers

- Do not ask to be a subordinates “friend” on social media sites
- Do not ask for any employee’s password
- Careful of defamatory statements about subordinates

# Considerations for Multi-State Employers

- Off-Duty Statutes
- More Protective Privacy Laws

# Post Employment Issues

- Linked In Recommendations
  - Same as an employment reference
  - Should be consistent with company's post-employment reference policy
  - Update post-employment reference policy
- Confidentiality Issues

# Thank You!



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