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Title: And your Facebook password is ...
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There is no question that the economy, and particularly the job market, remains fragile. Recent statistics show a mix of limited new job growth and high unemployment rates. Media reports abound that describe dozens to hundreds of applicants who are applying to an individual job posting. With these conditions, job applicants have their hands full trying to impress a potential employer with their skills and their abilities to do the job that they are pursuing. But what happens during the interview when an employer asks, "Can you give me your Facebook password?" or if the employer follows up the interview with a friend request?

This situation appears to be more common as employers recognize that Facebook and other social media platforms have become the go-to outlets where many people share information. People use Facebook for everything from whimsical posts and collaborative chats to groans and gripes about life at work. Employers may take the perspective that they need to know not only their potential employee's work-related skills and abilities but also the characteristics and traits that indicate the person's capability of being a good, reliable employee. Many employers claim that Facebook provides insight about those traits.

Laws Protect Against Discrimination

A weak job climate gives employers much greater power in the interviewing process than a strong job market. Existing federal and state labor and employment laws give employees protection against certain forms of hiring discrimination, such as asking about pregnancy or children, health issues, age, religious background, or nationality. Both commentators and lawmakers are raising the question whether new laws are needed to protect individuals against having their Facebook privacy invaded and whether employers should be entitled to find out as much as possible before investing in a new employee.

It is difficult to determine the privacy of your internet dealings, but it's really not surprising that employers often will do background checks on potential employees, including what's on Google and available via other online searches. These searches tap into a variety of sources including the public postings on Facebook and other social media. A few years ago, I considered another professional position, and when I showed up for the interview, the first topic of conversation was about my (admittedly geeky) hobby of model rocketry. My Facebook picture shows me with a large model rocket. While not necessarily related to the "essential elements" of the position, it proved to be a good icebreaker.



Password Likened to a 'House Key'

But the private portions of Facebook and other social media are often places where people post and provide information to friends whom they would normally trust and expect to keep that information within their small community. One commentator likened a Facebook password to a house key, in that the public can view what one does in public, but Facebook is a cyberhouse where people can express views and engage in activities that they may neither expect nor want the world to know about.

[ILLUSTRATION OMITTED]

From a legal standpoint, the private area of Facebook is also likely to be the source of posts, pictures, or comments that could lead to violations of discrimination laws, such as pictures of children, posts about the sermon last week, or likes of a gay rights organization. If employers are not legally permitted to ask about these issues in an interview, should they be permitted essentially to require a potential employee to turn the same information over through his or her Facebook page?

Several states and the U.S. Congress are considering legislation to prevent employers from requiring employees or prospective employees from turning over Facebook and other social media passwords as a condition of hiring or continued employment.

Proposed Password Protection Act

In Congress, both the House and Senate introduced the Password Protection Act of 2012. The act would prohibit an employer from attempting to compel or to coerce a person into providing access to a social network system through a "password or similar information" such as a friend request. In the House, a separate proposal called the Social Networking Online Protection Act would go further by extending the same protection to students and by allowing the Department of Labor to pursue injunctions and civil penalties against employers who violate the law.

Similar proposals are also pending in several state legislatures, including California, New Jersey, New York, and Pennsylvania. Both Illinois and Maryland have enacted legislation to protect employees and job seekers from being compelled to turn over their Facebook passwords.

There are some arguments in favor of employers requesting Facebook passwords. If a position requires a substantial degree of trust or reliability, then one commentator suggested that requiring applicants to "reveal this side of themselves" through Facebook may be a legitimate concern. Maryland's legislation specifically carves out an exemption when an employer is concerned about trade secrets for secured financial information.

Privacy and 500 Friends

A study by The Bureau of National Affairs, Inc. argued that an outright prohibition on Facebook passwords would actually provide more privacy than the law requires. The study suggests that information posted on Facebook and accessible to 500 friends is no longer "private" as the law defines it. Privacy law protects against "unreasonable" intrusions into a person's private affairs and against the disclosure of "matters concerning the private life" of a person. Voluntarily disclosing this information to 500 people would make it difficult to argue that a Facebook password request is "unreasonable" or that the matters posted on Facebook are truly "private."

Scrub Your Facebook

So what should you do in the absence of legal protections and when the job market puts you in a weak bargaining position? The first and best advice is to limit what you post on Facebook. An alternative is to periodically "scrub" your Facebook or other social media posts, removing posts that are no longer relevant or that don't reflect your current situation.

Facebook now also allows different levels of access and a greater ability to control who can see what and who can use those features. But ultimately, it may be just a matter of deciding your personal willingness to accept or reject a prospective employer's request for your Facebook password and what that would mean for you and your potential new work environment.

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