

Lawyers warn employers against giving glowing reviews on LinkedIn

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It may look harmless, but it's a legal land mine for employers.

Management-side lawyers are warning employers about the hidden dangers of LinkedIn, the popular business networking site that posts recommendations for job candidates. Specifically, attorneys are advising employers to be wary of giving glowing remarks about employees on the site because the employers risk having the recommendations used against them in a discrimination or harassment suit.

Plaintiffs' lawyers, they fear, are scouring these sites, looking for evidence to dispute firings, as most LinkedIn recommendations are positive. So if a supervisor claims that an employee was let go due to performance problems but gave a rave review about him or her on LinkedIn — that, the lawyers stress, won't look so good.

"That could prove problematic if a plaintiffs' lawyer is mining these sites," said Wayne E. Pinkstone of the Chicago office of Atlanta's Fisher & Phillips, who represents employers in work place disputes. "The whole social networking issue is something that's on our minds as management-side employment lawyers. And because of the explosion in [LinkedIn's] use, we suspect at some point that we're going to see its use pop up in litigation....It's probably only a matter of time."

Pinkstone, for example, has handled several wrongful termination lawsuits in which an employer claimed that an employee was let go due to job performance issues, but the employee claimed it was discrimination- or harassment-related. To bolster their argument, he said, the employee can now turn to LinkedIn and say, "and here's the proof."

Pinkstone's comments come on the heels of a recent study that shows LinkedIn is the tool of choice for employers researching job candidates' credentials. According to a recent Jump Start Social Media poll on how social media are being used in the hiring process, three-quarters of hiring managers check LinkedIn to research the credentials of job candidates. Of the 100 hiring managers at small, midsize and large companies surveyed, 75% use LinkedIn, 48% use Facebook and 26% use Twitter to research candidates before making a job offer.

That's understandable, said management-side attorney Carolyn Plump, a partner at Philadelphia's Mitts Milavec who sees the value in using LinkedIn to research a candidates' background. Employers should just be mindful not to use any information they find in a discriminatory manner, she said.

But as for supervisors themselves posting comments about exiting employees on LinkedIn, Plump strongly advises against it.

"Just don't do it," Plump said. "Generally, my advice is that I think employers are often better served by merely stating dates of employment, positions with the company and salary, and staying away from much more because there are so many potential ramifications if they say something."

She added: "If they say something negative, there could be a lawsuit. If they say something positive, there could be a lawsuit."

True, recommendations on LinkedIn could prove helpful to a plaintiff suing over their termination, but the information could also go against a plaintiff, said employee-rights attorney Linda Friedman of Chicago's Stowell & Friedman.

For example, if an employer claims that a person was never good at his or her job, but glowing statements from a supervisor show up on the Internet about him or her, that could help the employee who claims that discrimination led to their termination. But if the supervisor was actually treating everyone the same and writing glowing things about everyone on a Web site, that could disprove a discrimination claim. Plus, she said, employers can justify the positive comments by explaining that they were just trying to help a person who had lost his or her job.

"In a good lawsuit, you can explain away anything....The person could explain, 'Look, you don't want to be mean, so you write nice things.' I think most jurors understand those issues," said Friedman, who concludes that LinkedIn "might not be helpful for either side."



Fisher & Phillips' Wayne Pinkstone



Mitts Milavec's Carolyn Plump