

**Danielle Whitworth Barnes**  
Assistant Commissioner and General Counsel  
Tennessee Department of Human Resources

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What do you see?



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## Hiring

Cannot discriminate on the basis of :

- ❖ Race
- ❖ Color
- ❖ Religion
- ❖ National Origin
- ❖ Gender
  - Pregnancy
  - Caregiver responsibilities
- ❖ Age
- ❖ Disability
- ❖ Veterans Status




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## Hiring in the Social Media Era

Social media for hiring purposes is at an all-time high: 92 percent of companies use platforms such as Twitter, LinkedIn and Facebook for recruitment, and 45 percent of Fortune 500 firms include links to social media on their career page sections.




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## Hiring in the Social Media Era

A company wants to hire in accounting. They want aggressive talent, specifying that the individual must have a minimum of 3 years accounting experience and no more than two jobs in the last 6 years. The potential candidate must be a CPA and have relevant experience closing books for a multimillion dollar company. They turn to LinkedIn, Facebook, and other social network sites to look for potential candidates that meet the requirements.



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## Hiring in the Social Media Era



As they pull up the list of possible candidates that may be capable of doing the job based on skills and experience, they remove anyone from the list that looks like they may be older.

They instantly eliminate those candidates from consideration based on age, not based on skills, experience, or ability to be successful.

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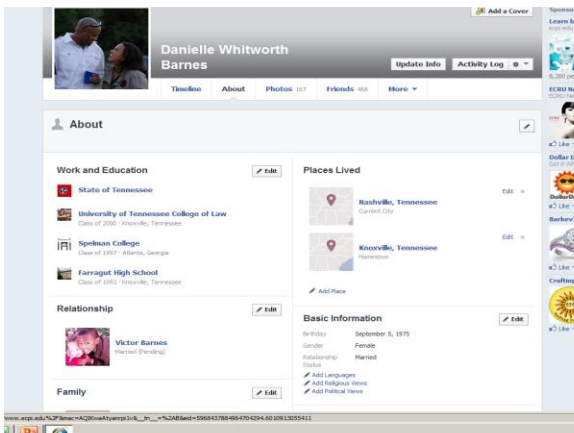
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## Hiring in the Social Media Era



- What if the search reveals that an applicant has a medical condition or a family member with a serious illness?
- What if it is discovered that a candidate is pregnant or has a family?

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## Prescreening

- Background Checks
  - ❖ Credit Reports
  - ❖ Criminal Records
  - ❖ Medical Records
  - ❖ Bankruptcy
  - ❖ Military Service



Practices must be job related and consistent

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## The Interview



- Do ask job related questions
- Do ask about the applicant's qualifications
- Do ask if the employee can perform the essential function of the job
  - It is permissible to ask about why the employee left employment, how many days off they took, and any previous disciplinary action




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### The Interview

- Do NOT ask the applicant's age
- Do NOT ask if the applicant needs a reasonable accommodation
- Do NOT ask about current medication
- Do NOT ask about criminal arrests
- Do NOT ask for social media passwords or user names



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### Hiring – Interview Notes

- Avoid negative impressions
- Must retain for a minimum of one year
- Notes do not become a part of the employee's personnel file



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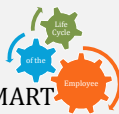
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### Set Employment Expectations



- Create a performance plan that is SMART
- Discuss expectations with the employee
- Give them a copy of any policies, handbooks, rules, code of ethics, etc.



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### Documentation

- Regularly document performance expectations and results – the good and the not so good
- Schedule regular meetings with the employee to discuss performance and/or conduct




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### When a Good Employee Goes Bad

- Performance
- Employee misconduct  
Intentional bad behavior by an employee. This does not include low productivity, poor judgment or inadequate performance.

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### When a Good Employees Goes Bad

*Instead of spending my birthday celebrating, I will be working all night cleaning up feces. I hate loathe that effin heffer!!! Burn in hell you effed up spawn of satan. I curse you and wish you a lifetime of pain and suffering. That is not enough, right now I would give anything you (sic) smack you down and pound you to unconsciousness. Thanks to the effin heifer who royally effed up my schedule, not only am I working Mothers Day, my birthday and my anniversary. And this Friday, I will be getting the smallest paycheck I had in 12 years due to the 17 percent pay cut we had to endure.*




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## When Good Employees go Bad

- Memphis police office has a policy against owning a private business, especially private security
- Police officer is fired for owning a private security business, known as "Peace Security"
  - Firing was valid in light of policy
  - Officer did not tell the truth during the investigation



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## He Said...She Said

- You've done all you're supposed to do, but the employee claims the action was based on race, sex, religion, etc...



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## In Your Defense

- Keep all relevant documents
- Maintain relevant and consistent policies
- Treat all employees the same
- Do not fear the courageous conversations



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### It's Time to Let Go

- Never act in haste
- Do not treat employees differently
- Must be based on relevant action or inaction



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### Cat's Paw

- Supervisor made anti-veteran sentiments. After making statements, he wrote the employee up for some violation of policy. The supervisor then tells HR to fire the employee because of another violation of policy. HR does so without independent verification. The employee sues stating that his termination was because of his veteran status.
- Make sure you get all the facts before acting!

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### Those Left Behind

- Continue to run the business
- Communicate, but keep confidences
- Credibility comes with consistency



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## Starting all over again



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## Questions



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