

SOCIAL NETWORKING: SHOULD THE BOSS BE YOUR FRIEND ON FACEBOOK?

Are you connected? No, we aren't asking if you can get the best table at the local restaurant or tickets to a sold-out event. We mean, are you connected via the increasing electronic social networks that claim more than 200 million active users? If you aren't, should you be? Facebook, MySpace, and LinkedIn contain a wealth of potential information on applicants and current employees.

Everyone's doing it!

Social networking has become the new way to keep in touch. Celebrities "tweet" updates about their daily activities in 140 words or less. Families and friends share photos and keep in touch via Facebook and MySpace. Professionals create business networks through LinkedIn. According to one report, nearly half a million people join social networks every day. But should employers join in? Should you use social networking to perform under-the-radar background checks on applicants? What about the subordinate who wants to "friend" you on Facebook?

Social network information and recruiting

"Are you married?" "How old are you?" "Are you pregnant?" Experienced interviewers know that asking any of those questions in an interview is unlawful and opens up an employment law minefield. All of that information – and much, much more – may be available to unwary employers that run informal background checks of applicants on social networking sites or simply look them up on the Internet.

"Googling" an applicant and finding his social network site may open you up to allegations that you discriminated against him based on information you perhaps learned inadvertently – information that is unlawful to obtain in an interview. The first thing you're likely to be confronted with should you choose this route of amateur investigation on a social networking site is a photo of the applicant. Most Facebook users include a photo as part of the initial profile they create when registering their accounts.

What information does a photo of an applicant convey to you? Plenty. A photo can give you information on the applicant's sex and race, an estimate of his age, and whether he has any obvious disabilities. Once you have that information as a hiring employer, you are subject to potential discrimination claims for gender, race, age, and even disability discrimination.

But don't you have to be a "friend" of the applicant to review that information? No. Although you may need to be added as a friend to see an individual's personal information, the same isn't true to see a profile photo. The applicant's actual profile may contain all sorts of personal

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information, including alcohol and drug use, religious preferences, and more.

Remember, too, that the North Dakota Human Rights Act prohibits discrimination based on an individual's "lawful activities" that occur off the employer's premises. Thus, even photos of the applicant smoking could be cause for trouble.

You've been "added as a friend"

Just as recruiting or doing background checks on social networking sites may pose problems for employers, Facebook may cause problems when the line between "social" and "professional" becomes blurred for existing employees. What do you do when a subordinate with whom you are on good terms invites you to be a Facebook friend?

Many of the issues that apply to applicants also apply to subordinates and coworkers. Not only do "friend" invitations have the potential for social and professional awkwardness, but supervisors who view subordinate's profile photos and personal information may find themselves in possession of information they really didn't want and can't lawfully ask about. Inappropriate or harassing comments left on a subordinate's or coworker's "wall" or homepage may even subject employers to sexual harassment claims.

Practical pointers

Before you respond to that next "friend" request or decide to do a little Internet research on an applicant, consider the following tips:

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RISK SERVICES

ADA Swimming Pool Guidelines Now Law

The President has signed into law new revisions to the Title II (states, local governments, & public entities) and Title III (non-profits and businesses open to the public) provisions of the Americans with Disabilities Act or ADA. Included was the adoption of the 2010 Standards for Accessible Design that codifies accessibility requirements for pools. The term "pools" includes spas, lazy rivers, and wave pools.

Generally, the rules are effective after a six-month grace period. Compliance is expected after 18 months. Failure to comply with these regulations could subject you to lawsuits and/or complaints filed with the Department of Justice. Some exceptions will be allowed. To be granted an exception you must prove undue financial hardship, reasonable accommodations are not readily achievable, or compliance would significantly alter the historic nature of your facility. The Department of Justice has warned that this will be difficult to prove.

How you respond depends on the total lineal footage of your pool's walls. A pool with 300+ lineal feet of pool wall requires you to have at least two accessible means of entry. One entry must be either a sloped entry or a pool lift. The secondary entry can be a lift, sloped entry, access stairs, transfer system or transfer wall. There are specifications included in the guidelines for each type of entry.

The Model Aquatic Health Code or MAHC

The Model Aquatic Health Code may be new to some and familiar to others that are affected. The National Swimming Pool Foundation, the Centers for Disease Control and Prevention (CDC) along with public health and industry

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representatives from across the nation are working on this new set of guidelines for the aquatics industry. The term “guidelines” is used guardedly as many entities will adopt the MAHC as a law, regulation, or ordinance.

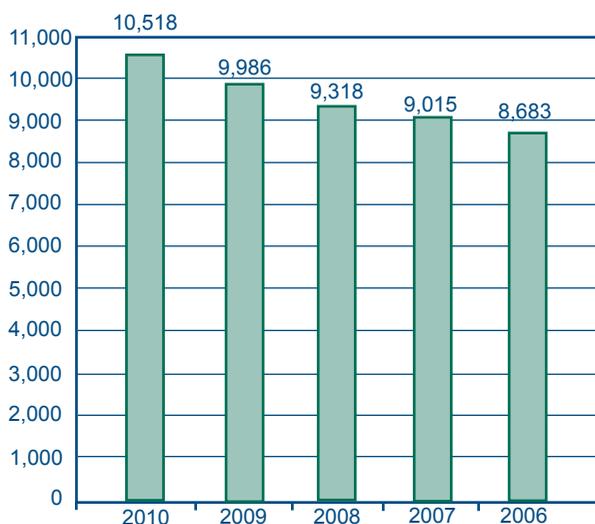
The impetus for this code is the lack of a uniform national set of pool codes. This has led to a hodge-podge approach to design, construction, operation, and maintenance of aquatic facilities. The new code is designed to be a data-driven and knowledge-based risk reduction approach providing a user-friendly scientifically supported uniform model national code but it is not yet completed. The difficult task of establishing a consensus among so many different entities and individuals takes time. Twelve technical committees have been established based on specialized knowledge and expertise. The committees are:

- Contamination Burden,
- Disinfection & Water Quality,
- Facility Design & Construction,
- Hygiene Facilities,
- Lifeguarding/Bather Supervision,
- Monitoring & Testing,
- Recirculation Systems & Filtration,
- Regulatory Program Administration,
- Risk Management/Safety, and
- Ventilation & Air Quality.

We at the NDIRF look forward to the completion of this code. It will greatly simplify and provide support for our recommendations made in surveys of our members’ aquatics facilities. ■

FINANCIAL INSIGHTS

WRITTEN PREMIUM (in thousands)



This graph represents the contributions NDIRF members make annually to fund their coverages. As the chart shows, NDIRF has enjoyed steady growth in written premium and exceeded \$10 million for the first time in 2010. ■

FROM THE CEO

If it's February, and an odd-numbered year, legislative activity in North Dakota must be on the front burner - and indeed it is. There are a couple of bills that I would particularly like to call to your attention and recommend for your support – Senate Bill No. 2161 and Senate Bill No. 2295.

Over the past several years, the North Dakota Supreme Court has, in a series of decisions, diluted the defenses available to political subdivisions in cases involving section line responsibility and recreational immunity.

SB 2161 seeks to clarify that townships and counties do not have a duty to inspect or maintain congressional section lines where no actual road has been built or is being maintained – in essence, the prairie trails with which we are all familiar that follow, more or less, section lines. The bill is not intended to affect actual, regularly maintained roads or minimum maintenance roads.

SB 2295 is designed to restore the focus of North Dakota's recreational immunity statutes to their basic premise – providing certain immunities from liability to landowners, public and private, in exchange for allowing use of their property without charge. Recent Court decisions have shifted attention to the recreational user, inquiring into their identity, type of use and nature of the property being used. Please contact your state legislators and express support for SB 2161 and SB 2295. ■

Mark CALENDAR

April 2011

- 26: ND League of Cities Regional Meetings, NW Region, Crosby
- 27: NC Region, Westhope
- 28: SW Region, Killdeer

May 2011

- 3: ND League of Cities Regional Meetings, NE Region, Grafton
- 4: SE Region, Valley City
- 5: SC Region, Jamestown
- 18: NDIRF Annual Meeting Doublewood Inn, Bismarck
- 18: NDIRF Board of Directors Meeting

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- **Just because it's informal doesn't mean there aren't legal consequences.** Although reviewing applicant or employee networking information on the Internet may be informal, it is still subject to state and federal discrimination laws. Any protected class information you learn may subject you to claims that you discriminated based on that information.
- **Be consistent.** Whether you are reviewing applications or interviewing applicants, treat everyone the same. That means you should use Internet search engines (e.g., Google or Yahoo!) or social networking sites selectively. Develop a policy or procedure for conducting applicant background reviews. If you decide that the benefits of using online research outweigh the potential risks, develop a policy and stick to it. Inform applicants of your selection procedures, including the fact that you review social networking sites, before reviewing online information.
- **Develop a social networking policy.** Although you can't limit employees from using social networking sites on their own time, you can – and should – develop and distribute a policy stating that Facebook, MySpace, Twitter, and other social networking sites cannot be accessed on company time or equipment.
- **Social networking is for social purposes.** Social networking sites may provide a valuable tool for families and friends to communicate. They may even be valuable for marketing when specifically developed for business purposes. However, to maintain professionalism in the office and limit your potential exposure to claims, the use of those sites should be limited to social purposes.

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