

# LinkedIn, the Fair Credit Reporting Act, and the Real-World Implications of Online Activity

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With the ever-increasing amount of information available on social media, employers should remember to exercise caution when utilizing social media as a part of their Human Resources/ Recruitment related activities. We live in a digital-age, and how people choose to define themselves is often readily showcased on social networking sites. Whether – and how – employers choose to interact with the online presence of their workforce will continue to develop [as the relevant legal standards try to catch up](#).

A recent [federal court filing in the Northern District of California against LinkedIn Corp.](#) provides yet another example of the growing interaction between online personas and real-world employment law implications. There, in *Sweet, et al v. LinkedIn Corp.*, the plaintiffs sought to expand the application of the Fair Credit Reporting Act (“FCRA”) by alleging that LinkedIn’s practice of providing “reference reports” to members that subscribe to LinkedIn’s program for a fee, brought LinkedIn within the coverage of the FCRA as a Credit Reporting Agency (“CRA”). Briefly, the FCRA (and relevant state statutes like it) imposes specific requirements on an employer when working with “any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.” In other words, there are rules – such as providing requisite disclosures and obtaining prior authorization – that apply when an employer engages a CRA to perform background checks, reference checks and related inquiries.

In the lawsuit, the plaintiffs alleged that LinkedIn was a CRA – and that these various rules should apply – because LinkedIn collected and distributed consumer information to third parties and the resulting reference reports “bear on a consumer’s character, general reputation, mode of living, or personal characteristics, and/or other factors listed in 15 U.S.C. § 1681a(d).” Further, according to the complaint, LinkedIn violated the FCRA because it should have provided FCRA compliant disclosure and followed the reporting obligations applicable to CRAs.

LinkedIn, which is touted as the “world’s largest professional network,” does not portray itself as a CRA and moved to dismiss the complaint. LinkedIn argued that the plaintiffs’ interpretation of the statute was too broad and, moreover, was inconsistent with the facts. A federal judge [agreed and](#)

[dismissed the complaint](#) (although the plaintiffs have the opportunity to file another complaint). The Court ruled that these reference searches could not be considered “consumer reports” under the law – and LinkedIn was not acting as a CRA – because, in part, the plaintiffs had voluntarily provided their information to LinkedIn with the intention of it being published online. (The FCRA excludes from the definition of a consumer report a report that contains “information solely as to transactions or experiences between the consumer and the person making the report.”) The Court also noted that the allegations suggested that LinkedIn “gathers the information about the employment histories of the subjects of the Reference Searches not to make consumer reports but to ‘carry out consumers’ information-sharing objectives.”

The LinkedIn case should still serve as a reminder of several important and interrelated trends. First, as it concerns the FCRA, the statute is broadly worded to cover “any written, oral or other communication of any information by a consumer reporting agency . . .” and the equally expansive definition of a CRA can apply in numerous situations that extend beyond the traditional notion of a consumer reporting agency. If applicable, the requirements of the FCRA must be followed. Second, employers need to continue to be mindful of the fact that their online activity can have real-world employment law implications. Third, as the law governing traditional employment law continues to evolve in response to online developments, the challenges to that activity will evolve as well.

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