

#SocialSectorStrong

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TRANSCRIPT

**LEVERAGING  
TECHNOLOGY FOR  
21ST CENTURY  
INTERVIEWING**

Nonprofit**HR**

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# LEVERAGING TECHNOLOGY FOR 21ST CENTURY INTERVIEWING

The 2018 Nonprofit Talent Management Strategies Survey indicated a top priority of many nonprofits is to strengthen internal capacity around interviewing skills and practices. This means that nonprofits need to have nimble and efficient recruitment processes to compete for talent, and technology is a huge part of that talent acquisition equation. While video and new HR technologies for recruitment have made the interviewing process a lot more fun, these new developments have also added a layer of legalities that your nonprofit's recruiters and hiring managers may be oblivious to, possibly exposing your mission to unnecessary harm. This webinar is for you if you know that your nonprofit has recently or will soon update its processes and technology tools for interviewing candidates. Listen now for immediate answers to your team's and internal partners' growing recommendations to incorporate more technology into your recruitment strategy. Plus, invite them to participate in the discussion to hear an update on emerging pitfalls first-hand.

## SPEAKERS:



**Yvonne Rivera**  
Director Talent  
Acquisition  
Nonprofit HR

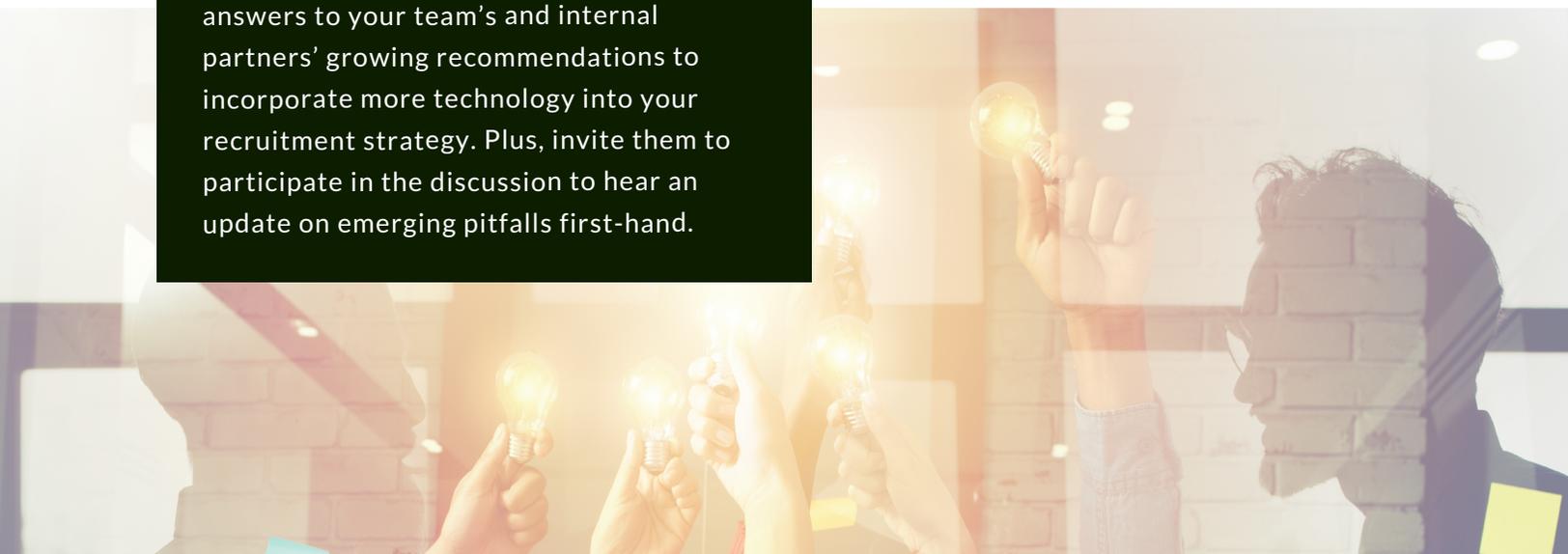


**Sadina Montani, Esq.**  
Partner  
Crowell & Moring, LLC

## MODERATOR:



**Alicia Schoshinski**  
Managing Director,  
Talent & Development



**Alicia Schoshinski:** Hello everyone and welcome. Thank you for joining us this afternoon for Nonprofit HR's webinar on Leveraging Technology for the 21st Century Interviewing: Rights, Wrongs & Definitely Nots. My name is Alicia Schoshinski. I'm the Co-Leader of Nonprofit HR's Knowledge practice and a Senior HR Business Partner. I'm going to be your moderator for today. Before we get started, I would like to go over a few items so you know how to participate in today's event.

You joined the presentation listening using your computer's speaker system by default. If you prefer to join over the telephone, just select telephone in the audio pane and the dial-in information will be displayed.

You'll have the opportunity to submit text questions to today's presenters by typing your questions into the questions pane of the control panel. You may send in your questions at any time during the presentation. We will collect these and address them during the Q&A session at the end. However, if we are able, we will take questions throughout as well.

Today's webinar is being recorded and you will receive a follow-up email within the next few days with a link to view the recording. The HRCI and SHRM activity ID for recertifications will also be included in that message. At the end of the session, a feedback survey will pop up. We appreciate you providing your thoughts on today's session and any other topics you'd like to hear about in the future. Let's get started.

The results of Nonprofit HR's 2019 Talent Management Priorities survey showed that employers identified strengthening internal capacity around interviewing skills among their top priorities in the talent acquisition area. Therefore, we wanted to take this opportunity to share thoughts on how technology can play a role in your recruitment processes which are aimed at being nimble and efficient in helping you compete for talent. Our speakers will address the role of technology in any legalities that should be considered.

The Talent Management Priorities Survey shows that interviewing skills ranked among the top three priorities that employers wanted to hear about.

For today's webinar, you're going to hear from Yvonne Rivera, Director of Talent Acquisition for Nonprofit HR, and Sadina Montani, Shareholder with Vedder Price's Labor and Employment practice area. Aaron Brown, Talent Management Consultant with Nonprofit HR, is going to introduce our speakers and will participate in the conversation as well. I will now turn it over to Aaron.

**Aaron Brown:** Thank you, Lisa. I'm excited to introduce our speakers who can share a wealth of information on today's topic.

Yvonne Rivera is a bilingual professional who brings more than 20 years of diverse credentials to Nonprofit HR. She is an established talent acquisition strategist with a proven track record in providing exceptional service, developing strong relationships with hiring managers and providing full lifecycle recruitment of quality employees from C-suite to entry level to ensure a strong candidate pipeline, all while having the ability to manage multiple recruiting projects simultaneously with sometimes inflexible deadlines. She brings deep experience supporting the recruitment needs of the nonprofit sector. As a Director of Talent Acquisition at Nonprofit HR, Yvonne leads our direct hire, contingent talent and recruitment outsourcing activities, including building and cultivating client and candidate relationships and enhancing the firm's opportunities to continue to serve as a value business partner with our clients.

Sadina Montani is a Shareholder in Vedder Price's Labor and Employment practice area. Ms. Montani regularly represents employers in state and federal courts and before various administrative agencies defending claims of race, sex, disability, age discrimination, wrongful termination, wage violations and wage payment claims. As Ms. Montani counsels and conducts training programs for her clients on all types of employment-related issues. This includes harassment and discrimination issues, termination issues (including reductions in force), ADA compliance and discrimination issues, FMLA and FLSA compliance, USERRA compliance and various federal and state employment laws. Ms. Montani routinely conducts and guides clients through challenging internal investigations. Additionally, Ms. Montani has significant experience with wage and hour matters, and regularly conducts wage and hour audits for clients to ensure FLSA compliance. I will now turn it over to Yvonne to begin our program.

**Yvonne Rivera:** Thank you, Aaron for the introduction. Hi, my name is Yvonne Rivera, I'm the Director of Talent Acquisition here at Nonprofit HR. I oversee our temporary staffing, direct hire and recruitment outsourcing practices. Nonprofit HR works exclusively with the nonprofit community, placing talent at all levels. If you need some short-term help, we can be there with temporary staffing, but if you need a more senior candidate for a permanent position, I would recommend our direct hire services. We take care of the full recruiting process from start to offer. Then, our recruitment outsourcing practice is a new offering from the firm. I would best describe it as an a la carte recruitment service, we can do as much or as little of the process for you. Our purpose is to act as an extension of your recruitment staff.

First, we'll kick it off with the screening and interviewing methods that appeal to the tech savvy and increasingly remote and contingent workforce. Then, we are going to navigate the rights, the wrongs and the definitely nots of using social media in the recruitment process. Then, we will round this all off by talking about using technology to build dialogue with active and passive candidates.

We will also, at the end, do our Q&A but please feel free to add any questions along the way in the questions panel and as time permits, we will address those. Let's get right into the content.

The 21st century screening and interviewing methods. We all know the technology out there right now that's enhancing our screening and interviewing processes. I'm sure we've all experienced being bombarded by sales reps constantly wanting to sell us stuff, such as their new and exciting tools. We thought this would be a really good opportunity to explore some of these technologies and talk through the do's and the don'ts. Since there's a legal component to all of these issues that we'll be talking about, we've invited Sadina Montani to speak on all of the legal risks with us.

One of the most important takeaways is to make sure that your organization has a consistent interview process for all candidates. I'm going to quickly go over the basic steps of the interview process. We want to make sure to post that job vacancy first, pre-screen or phone interview the candidates in a pre-screening method, proceed to an in-person or video interview, do the backgrounds and references and then the last step is the job offer and negotiating the compensation with the candidate.

Now we're going to do a poll! How are you using technology for the talent acquisition process?

Please take a moment to complete the poll online.

All right. Let's see what the results are.

Wow, look at social media at 58%. We'll definitely be getting into all of these topics and speaking to each one of them, but it looks like social media is the highest one.

We're finding new ways to use technology to help us be more efficient with our processes. And these are just some of the tech methods to augment your interview process. Some of the tools or technology that we're using to augment our interview process is AI, or artificial intelligence. The latest tools are referred to as bots, one of them is called Maya and she was developed by a startup company in 2016. There's another one named Olivia and she was developed by an organization called Recruitment AI. These tools are really to enhance the applicant process. It engages the candidates, it makes it more interactive for them and you have a better outcome as far as that candidate experience. Also, we're in a really tight labor market so it's something that makes you a little different from your competitor.

One of the other tools we talked about is video interviewing. This would be platforms like Zoom or Skype messenger and I believe that LinkedIn is developing a platform of their own so they are definitely here to stay. As far as the pre-recorded video interviewing, some of the most popular we found from a poll that we did is a one called VidCruiter, one that's called our RIVS digital interviewing, and SparkHire, which I think a lot of our clients are using. I'm sure that you're familiar with many of these and many more so feel free to use our chat feature and add them in there to share with the group.

With all those technologies in mind, here are some of the pros and the cons of using some of these tools. I'm going to go over them and we'll talk them through. Some of the pros of using the video interviewing are the logistics. For instance, if you have a number of people on a panel that you need to coordinate for an interview, it's so much easier on you, logistics-wise, if it's going to be a video. You send them a Zoom link and you're good to go. Second, it's maximizing the recruiters time as well because the recruiter can go from one interview to the next and have a really productive block of time where if you had an in-person interview, you would have to say goodbye to the person, get up, take them to the door, etcetera and so video makes this more efficient.

Next, we're also expanding our geographic talent pool, so I can be in Washington D.C. and interview people in Minnesota, California or Chicago. It expands our pool, especially in this tight labor market. Also, it reduces the job seekers' travel expenses because some of these of these job seekers might be located in a different state and they have to take time off or use their leave. They probably don't really want to be taking leave off to come to interviews, so this way they can sit in their home, log onto their computer or their cell phone and be just as productive. But, of course, with any pros there are going to be cons, so some of the things that we do lose by doing the video interviewing are soft skills, such as eye contact, and it's sometimes harder to gauge professionalism. One of the other areas is also demography, it could be we have our unconscious biases. We're looking at this person through a video screen and that could be a definite con for that applicant. Also, the ability to use or access this technology. Are we excluding people from being part of the applicant pool because they may not have access to this technology? We need to be really careful with that. Lastly, and I'm just going to mention, before passing it on to Sadina, that we have to consider the Americans with Disabilities Act (ADA) as well.

**Sadina Montani:** Thank you for having me. I'm happy to be here speaking as part of this webinar. We will talk about just a few of the legal issues, we'll sprinkle them throughout today's webinar. In terms of the legal risks and things to be thinking about proactively as you are using technology in the interview process, specifically when you're doing any kind of technology-based interviewing, you need to be really cognizant of your obligations under the ADA to make sure that your accommodating folks who have disabilities that may hinder their ability to interact using technology. The requirement to accommodate individuals in the

workplace doesn't just start once they come in the door. There is actually a requirement to accommodate their disabilities as part of the application process. The same interactive process you would engage in when they're an employee to determine what accommodation will enable them to perform the job duties, it's also something you need to be mindful of in the interviewing process to make sure that you're giving them access to technology in a way that is consistent with their abilities to function in light of a potential disability.

One of the cons that was mentioned a moment ago was that inability to judge the soft skills. I think it cuts both ways when you're talking about concerns that interviewers or judging interviewees have, but you need to be really mindful as an interviewer how you're approaching it. It can be less formal when you are engaging using technology and you need to be mindful of that, particularly as you're thinking about protected classes and how that plays into the decision-making process. Obviously, all hiring decisions need to be made without regard to any of the legally protected classes that could be raised: national origin, gender, age, etc. Of course, in jurisdictions like D.C., New York and California, there are a lot more protected classes. For example, in D.C. there is political affiliation, familial status or whether you're married or divorced, your personal appearance, etc. There's lots of protected classes so you really need to be mindful of that. It's a lot easier to step into those minefields when you're using technology because it can feel more casual.

The ability to record conversations is one of those areas where technology is both good and bad. It can be very, very good to ensure consistency with your interviewers. It also, and I'm coming at this from a lawyer and a litigator, in some instances when things really go off the rails, can be used as evidence. If you have an interviewer who's not being particularly cautious about their questions and they ask a question like, "How does your husband feel about all the travel associated with this job in light of the fact that you have kids?" That's going to be a big problem and you have it recorded. All the more reason to be really careful about training interviewers, and just as an aside, a number of states require that all parties in a recording approve of it and consent. That is just another bit of small print to be to be mindful of. It can be really useful though to record interviews, transcribe them and then use those as training guides for other interviewers. I would not recommend showing the video. The last thing you want to do is talk to your staff about how terrible this particular interviewer was, or the interviewee, and have everyone sitting around laughing at them. There's very, very little that good that can come from that.

A few other legal issues and pro tips to really keep in mind is that you need to be mindful of the legal compliance issues whether you're doing an interview that's in person or using technology, these really are present throughout. As I mentioned before, hiring decisions need to be made without regards to protected classes and having a really consistent interview process, as Yvonne mentioned, is really important to make sure that you make a good hiring decision but also to address the potential legal ramifications that come from a failure to hire someone. This is an adverse employment action, from a legal standpoint, in the same way that a decision to fire someone is.

**Yvonne Rivera:** All right. Well, I wanted to see if anyone had any questions before I moved on. Alicia?

**Alicia Schoshinski:** We don't have any, other than somebody asking about the email and the names of the AI technology. A copy of the slides will be sent to you in the email that follows so those will be included in there.

**Yvonne Rivera:** Okay, fantastic. Now, we're going to go ahead and move on to social media, which is in the hiring process but first, we're going to do another poll.

**Alicia Schoshinski:** What is your organization really looking for when searching for social media?

Some of the things you might be looking for is: Will I like the person? Do we have friends in common? Can you verify details on their resume?

These are obviously some of the do's and don'ts. Really what we want to talk about is what we call "Don't be creepy." Don't be creepy and snooping through people's backgrounds for no reason at all, unless your organization has a consistent social media search criteria. They must have that in order to be really using social media in your recruitment process. You can't just willy-nilly be looking up people and seeing as if you'll like them or not or if you have friends in common. Those are just not things that we do and there's a lot of legal ramifications to all of this which Sadina is going to talk about.

Now, we're going to talk a little bit about establishing this consistent social media criteria. Is there a legitimate business reason for you to be going into social media and researching these candidates? You need to standardize that social media research. You need to determine which sites might be appropriate and Sadina, of course, feel free to chime in because this is your domain. You need to train your interviewers or decision-makers not to engage online searches. Again, be consistent and document. You have to treat everyone exactly the same. Only provide relevant information to relevant decision makers. You're not going to be doing the search and then giving this information to the whole HR department, that doesn't make any sense and it can get you in a lot of trouble. I've had a personal experience with hiring managers where they are prodding way too much and violating all of what we've talked about, so you need to really be cautious with what you're doing. We're trying to educate people to not go down these rabbit holes because they can get into a lot of trouble.

**Sadina Montani:** Well, this is one of my personal soapbox issues. It's the trouble that employers can get in when they're engaging too casually on social media. Just to touch on a few of these points that Yvonne mentioned, is there a legitimate business reason for the social media searching? Curiosity is not a sufficient reason to be prodding around 72 weeks into someone's Instagram history. Just trying to find out if their dogs are cute, that's all you will see on my Instagram feed, or if you think you'll be friends with them, are things that have nothing to do with the hiring process. Even though we live in an era where so much of our personal business is available on technology, that does not mean that you should be digging through there as someone who's engaged in the hiring process. It is really important to think critically as part of the onboarding and recruiting process about what it is you might be trying to accomplish in your social media searches. I don't think there's ever a legitimate business reason to be looking through someone's Instagram feed, but LinkedIn is a great resource. Are you using social media to figure out if you like the person (not a reason to hire them)? Or, are you looking to determine whether they've been truthful about certain articles that they've offered or what their job history is? Again, being thoughtful about what searches or what sites you're using is really important, as well as who is doing those searches.

If you take nothing from my being on the soapbox for a moment, it's that you should be making sure that folks who are actually the ultimate decision makers, interviewers who are managers, business folks or even an executive director, are not doing their own social media searches. I have the good and bad fortune of having a memorable but very unique name and I will tell a story using my name as though I was using the circumstances of one of my very best friends who happens to have MS. Luckily, she does not have a very common name but she also doesn't have friends who are out there doing MS marches for her. That's something that you see all the time, people who are organizing events for their friends who may have specific medical conditions. Obviously, folks are sophisticated enough not to ask anyone in an interview,

“Do you have any particularly expensive neurological disorders that are going to cost us a lot of money and that potentially could impact your health down the road?” No one would ask that in an interview. But let's say that I had MS and that I have friends who are super supportive and wanted to organize a march in my name. If you Google my name, it's very likely that that could come up, then you have that information and you can't unsee it. There is real danger here in that willy-nilly social media process because you're inadvertently finding out information that you don't want to.

This leads very nicely into the next point which is the inadvertent discovery of protected information or classification. Be really mindful of the fact that you can easily come across stuff that you should not and do not want to know as part of the hiring process. I often go on-site and work with entire HR teams and one of the things that I talk about in the recruiting process is that recruiting is not dating. The things that you might look for if you're starting to date someone are not the same things you would look for if you're recruiting them for a job. I mean, it seems like a silly distinction and the folks who are in this room are kind of laughing at it, but it's true. Really thinking about the recruiting process as strictly about the job description, the job duties and the qualifications will go a long way in making sure that everyone who is involved in the process is being mindful of avoiding the legal minefields that exist there. Something else just to note is that off-duty conduct that is lawful is protected under most state laws. For example, you may see that someone in their time off is maybe engaging in political marches or marijuana use or getting intoxicated. As long as they're over 21, that's lawful. If you're in a jurisdiction like D.C., you may have drug-free workplace policies, so this could be a little complicated depending on the workplace. However, you need to be mindful that that is, in many jurisdictions, not something you can be making a decision about.

Then, just a note on the background check issue because I think this is one of the areas where social media background checks are a little nebulous. If you are doing too much of an involved social media check and you're looking on, for example, a court's website to see if someone has convictions, that is something that you need to avoid very seriously because there are obligations under federal law to make sure you get consent from folks to run background checks. In jurisdictions like D.C., for example, where we have the “Ban the Box” law that you may have heard about, you actually can't even run a background check until you have made a conditional offer of employment. It's not only the case that just engaging in social media searches could run afoul of the Fair Credit Reporting Act (FCRA), but you also could be violating state laws with regard to asking about or inspiring criminal background checks before you're allowed to as part of the hiring process.

So just to close on some of the legal risks here. I would urge that this is an area that more attention needs to be paid to. Not hiring someone is not as risky as firing someone, and I often get more calls about how to exit someone from an organization than how to make a hiring decision. I also will tell you that the EEOC and local agencies, like the Department of Employment Services in D.C. or the Maryland Human Rights Commission, are generally paying closer attention to the hiring process so this is an area where there will be increased legal risk. I also think that individuals who are not hired have more incentive to file a claim against an employer. The idea is that if you're an employee, you want to keep your job so you're less likely to just run off to the EEOC or the Office of Human Rights to file a charge of discrimination because you don't want that to impact your future with an organization. If someone has not been hired, they have very little incentive not to bring a charge against an organization that did not hire them if they think that the reasons they weren't hired were unlawful. It is an area with some risk.

As we were preparing for the webinar, we talked about what it means and what to do if someone has no social media footprint, which can seem very odd. I talked about dating a little bit ago. When I started dating my husband who has the most vanilla name in the world, I could not find him anywhere on the internet and it gave me a little bit of pause because I thought maybe he was using a name that wasn't his own. However,

hiring is not dating and so you need to be thinking about, again, what are the business reasons for doing a social media search? Are there certain things that you would generally be looking for? Did they author a certain article? Did they really work for the organization's they're saying that they did? There are other ways you can get to that information without freaking out because someone doesn't have a Twitter feed. Be mindful of that, it may not be that they are some kind of serial killer, it may just be that they have a very common name or they have chosen not to be on social media. There are some positions, of course, if someone is a high-level executive and they don't have a presence on LinkedIn—that would be odd. That might be something that you would ask about, but there's no harm at all in looking at someone's LinkedIn page as part of the recruiting process, that is completely fair game and a totally reasonable question to be asking.

**Alicia Schoshinski:** Okay, we did have two questions that were related to what you just talked about, the legitimate business reason and using LinkedIn. If anybody feels that they have further questions on that feel free to type them into the question box and we can get back to them.

Now, we are at our last learning objective: Using technology to build dialogue with active and passive candidates.

What we're going to talk about here is when we're using this technology, we need to make sure that the recruiters or the hiring managers are not only engaging with candidates, but they're also being responsive. By responsive I mean that we're all on LinkedIn, we're sending out emails and we're asking candidates either if they're interested or if they know people that may be interested. These folks reach back out to you and they respond either saying, "I'm not interested" or "Thank you for thinking of me, but I'll think of some candidates and maybe you know get some your way." Whatever that response might be, you need to respond because you never know when you're going to reach out to them again.

Again, be responsive and keep these folks engaged because when you want to reach out to them again, they're not going to reach back out. The other piece to that too is whenever we're sending InMails, or any type of technology that we're using, we're also tying it back to the organization that we're representing. We all are representing the organization's brand. If we're not responsive, if we're not doing the right things, if we're not engaging these candidates in the right manner, that reflects back to the organization as a whole. It might not just target you, but now they are thinking about how they don't want to work with your organization because of X, Y, Z reasons. We also need to remember the candidates are at different points in their job search so we want to be mindful of these differences and make sure that we are engaging with them properly.

This leads into how we need to be consistent. Again, consistency of everything. We need to be consistent using the messages. We can't be misleading candidates and using terminology that might be misleading to them where they might be thinking, "Oh, I got the job," or "Oh, there's an opportunity open for me," or things of that nature. You really need to provide templates to those, either recruiters or hiring managers, that are sending out messages so there is consistency because the last thing you want to do is mislead a candidate.

Lastly, providing hiring managers and recruiters with tips on managing the expectations of these candidates that you're trying to engage with. Again, it all really boils down to the candidate experience, as well as the brand that you're representing, because a lot of things can come back to haunt you.

Now, I will pass it back to Sadina who will look at some of the legal legalities of what we were just talking about.

**Sadina Montani:** There's a question that I'm going to take.

**Alicia Schoshinski:** Yes, somebody asked if LinkedIn is the only social media place that we can check?

**Sadina Montani:** That's a great question. It's certainly the safest and not to give the standard lawyer answer, but it depends. If you are looking on social media to find out if they have actually published articles or if they are who they say they are in terms of where they live and that kind of thing, you could check Twitter. I think that Twitter is probably next in line in terms of safety. If there's a reason that you're going, again, 72 weeks back into their Twitter feed you may need to ask whether that's looking for curiosity's sake alone. LinkedIn is the safest, I would say Twitter is next. I think that Facebook and Instagram start to get you into real questionable areas, and I generally would ask you to pause very hard before you start digging through either of those social media sites, unless there is a very, very specific reason that you're doing so. Did we have any other questions?

**Alicia Schoshinski:** Yes. Sadina, do you have examples of cases where people have gotten in trouble using social media, such as saying something inappropriate in the interview process?

**Sadina Montani:** I haven't had any legal cases yet and I have to tell you I am shocked that there haven't been any. I've dealt with charges in the interviewing process that have been just generally stepping into the areas that you shouldn't be. There were questions about travel and spouses. My favorite one was a question about whether someone who had identified in small talk as being a parent, whether she was planning on having more children. You can see how it would be even easier to find yourself in that situation if you have been digging around on social media. That happened to just be small talk that led to that question, but if someone's been digging around on social media and they see someone's Facebook page with their children, pregnancy photographs, whatever the case may be and just casually asked that question, suddenly you've got a pretty reasonable charge of discrimination that you're defending against. I think a lot of reasons why those don't get into a full-blown litigation and probably settle at the EEOC or agency level is because there's not a whole lot that you can do to defend against that when as part of the interviewing process, someone asks one of those questions. It is really hard to prove why you've gone with another candidate instead of that person. Consistency goes a long way with that and, not to get too far down a rabbit hole here, if you're going to do social media searches, have a checklist for whomever in your recruiting or HR team is responsible for, list which sites they checked on which date and what information they passed on to others so it can be very clear when appropriate information is shared or not. This can go a long way towards defending against those. Also, going incognito if you are able to is a great idea. Although, as long as there's a business reason it's perfectly fine. The last thing you want is, I keep going back to Instagram, if you accidentally like someone's Instagram picture from 72 weeks ago, it's going to be hard to take that back. Do we have other questions?

**Alicia Schoshinski:** Here is a question for Yvonne. How can our hiring managers match culture to a candidate's values? Is that something that can be researched in your opinion or only done in person? I think they're asking that in an interview, how you can try to understand how somebody is going to fit in your culture? So how you can do that by conducting an online interview, for instance, or if you're doing social media searches, is there a way to research that or is that just something that you can only get from an in-person interview?

**Yvonne Rivera:** Again, you have to have clear questions and understand your parameters because, like Sadina said a little while ago, even political affiliation is protected in the District of Columbia. We work with a lot of different nonprofits with different missions, and obviously a variety of cultures, so we need to navigate through those questions. Sometimes, we do get into small talk and there are certain ways of saying and getting to those cultural fits. It could be an organization that's faith-based or it could be an organization that's politically inclined and so you can have these conversations but in a consistent manner. You have to ask everyone the same questions in your interview process.

**Sadina Montani:** Yeah, and I would just add that it depends on what you mean by culture. If you have, from a work style standpoint, a culture of candor and frankness when it comes to giving feedback, that is an incredibly important thing to be talking to your candidates about, especially if there are different work styles on a team. Helping them understand how they're going to navigate those things is very, very important. I don't think those are issues that you can glean well from social media, but I think it speaks to the larger interviewing process and how you communicate those lower-c cultural issues to candidates using technology as opposed to sitting across from them in a conference room. That is something to be really thoughtful about in how you're crafting those questions so that even when you are looking at someone through a computer screen, you're able to really address those issues. As well, you are better able to ask the right questions to understand, from a work style standpoint and a work culture standpoint, if they're going to be a good fit for the team that they would be working on.

**Yvonne Rivera:** It's also having the right questions to ask. The right legal questions.

**Sadina Montani:** One of the one of the things to be mindful about when your recruiters or HR team is coordinating and working with candidates is not to overpromise. I have actually had a couple of cases where people have sued a potential employer because they thought they were going to have a job offer. They quit their job, they gave their notice and then it turns out they actually did not have a job offer. Being really thoughtful about what you're communicating to them during the process is important in that there can be some legal risk. Letting a lawyer take a look at your template script that Yvonne mentioned earlier is never a bad idea. It should take a good and trustworthy lawyer no more than 15 minutes to look at your standard emails. Having someone issue spot for you is a good idea to make sure those communications are tight, you're not overpromising and you're remembering that all of these communications can be potential evidence if you were to have a charge of discrimination or a lawsuit brought by someone who wasn't hired if they think it was for an unlawful reason.

The EEOC has been paying a lot more attention to the hiring process so this is a bit of a hot-button issue. As well, this has been an area in which I've seen states really step in, from a regulatory standpoint, and fill in gaps where they think that federal law doesn't do the trick, such as those "Ban the Box" laws that you see in D.C., Illinois and I think New York as well. Until very recently, I would say six or seven years ago, it was only Hawaii that had this legislation. Now, it's in a lot of local jurisdictions so it's something that people are paying a lot more attention to something to be really mindful about.

When you're talking about legal risk, we're sounding a bit like a broken record, consistency really, really is key. Consistency and documentation are the things that you are going to rely on very heavily should things go off the rail. Be really thoughtful about the background check issues as I mentioned earlier and engage legal counsel, even just for a little bit of time, to make sure that the process that you're using is consistent with what your local jurisdiction requires. Having someone take a look at your offer letters to make sure that you are providing the information that you're required to once you get to that step is really important. There are in D.C., New York and California, there are really specific requirements for notice

about wages, such as wage payments, what is included in wages, how they're paid and how often. These are really nitpicky things, but they can be easily missed and they are low-hanging fruit for attorneys who might want to bring lawsuits on behalf of employees and frankly, class actions. I have two class actions going on right now, one in D.C. and one in California, that deal with overtime issues, but baked into those cases are issues around wage notice requirements. These seem like very simple things but they are often missed and they are worth spending a little bit of time on with a trusted lawyer to make sure that you're getting them right.

One issue that folks often forget about when they're thinking about the recruiting process is that there can be non-solicitation obligations, either between the organization you're with, for which you're hiring or for individuals who are with the organization and their obligation is not to solicit away their former colleagues. This probably comes up less in the nonprofit space than it does in the government contracting space for instance, but still is something to be thoughtful about. If there is any kind of contractual relationship between two companies, there may be buried in the contract somewhere a provision that says you're not allowed to actively recruit and hire this other organization's employees. I just tried a case about this a few months ago and it can be very messy. What does active recruitment look like? It's a lot easier if you're actually being thoughtful about the process and you're saying you will interview this person if they come to you, but you're not reaching out to them or documenting it at the time. That's another unexpected way that you can face legal risks in the recruiting process. With that, do we have any other questions?

**Alicia Schoshinski:** It's actually time for the Q&A. Somebody mentioned that in their organization, they recently had a situation where they made an offer to a candidate. She had posted on social media that she was still considering other offers, but she told the organization that she had accepted theirs, so they were at a loss regarding what to do. Do you have any advice in that situation?

**Sadina Montani:** Well, there's nothing unlawful about saying on social media that you're considering other offers. I think that if she had said that she is going to take a job at this other employer, and then it turns out she's accepted your offer, there could be an opportunity to reach back out and just to confirm. I wonder how it was that the organization came to have that knowledge, such as if they were following her on Twitter. It seems like an odd thing for someone to post. It may raise questions about their business judgment, in all candor, like if someone is being sloppy like that. You've already made the decision, I don't think it's appropriate to revoke it, but I would say that's probably someone you want to be watching pretty closely when they come in the door to make sure that they actually do have good business judgment.

**Alicia Schoshinski:** Okay. Thank you. Another question for those of us that have geographic pay, or different pay depending on where you live, how do we note that in recruitment and hiring?

**Sadina Montani:** If the question is how you're communicating that externally, I think it's a pretty standard practice. You can certainly say, "Pay depending on geography." I see that quite a bit and that's certainly an appropriate thing to do. I think that where things tend to get a little sticky, and I have had this come up a few times, is where folks are interviewing for a remote job living, for example, in St. Louis, but they want the Chicago pay so they say that they are moving to Chicago. There's no real specific legal issue, it just gives me heartburn from a business judgment standpoint. Again, just be consistent with how you're communicating those requirements so that you can say to the person in St. Louis that that is your pay for that geography and if that's not something that they're willing to take, you understand. I hope that addresses the question close enough.

**Alicia Schoshinski:** This question is probably for Yvonne, what types of things are you looking for online when you're trying to verify facts from people's resumes?

**Yvonne Rivera:** Usually, education is really where you're going to be focused on, but we're also doing reference checks. We're going to typically verify facts off of their LinkedIn profile.

**Alicia Schoshinski:** Okay, somebody else asked a question related to the executive search level, such as when you have a committee doing a social media search for prospective executive. What would be appropriate to tell the board chair that the appropriate business reasons are for doing a social media search? I think they are asking if the board said they want to do social media search, what business reason would you give them for doing a social search? Is there a legitimate reason?

**Sadina Montani:** I think if you have someone who is leading, who's an executive director of a nonprofit for example, and they're posting on Twitter in a way that is unbecoming of someone in a leadership role of that level. If they are blurring the lines between what is passionate speech and what might be incendiary or that's inconsistent with the way that the organization wants to present itself or, and this is actually what I've dealt with, they've shown an unwillingness to separate their personal social media presence from the organization's presence, that really can speak to the business judgment. Honestly, even if you get those things reined in on social media, in my experience if someone is using judgment to post things on Twitter that are just really insulting, unprofessional and unbecoming, they may be a bully or a toxic employee and they might not be a good hire. When those concerns come up, I would urge you to step back and ask, how would this actually impact our workplace? Then, I would ask questions that really get to the heart of that. When you have had, for example, stakeholders on the board who are on very different ends of the political spectrum, how have you navigated those difficult waters, or how would you navigate those difficult waters? Give them hypotheticals that will allow you to really judge their business sense and their professional judgment to understand how they would approach those really challenging issues. That'll help you identify some of the red flags and how someone's high-profile Twitter feed is going to translate to working with boards, staff and those types of things.

**Alicia Schoshinski:** Okay, and then we have another question. What if somebody indicated on their resume that they live in Chicago or they used another address, but then the organization finds on social media that they actually are lying. Is that something they can consider?

**Yvonne Rivera:** Well, that's an integrity issue. If you're in an interview and they blatantly say that they live in Washington D.C. but then you find that that's not that's true, it would be a red flag as an integrity issue. They're not being truthful.

**Sadina Montani:** Well, I think jumping to conclusions is much easier when you're in the social media space than when you're talking to someone and asking questions. I would say if it appears on Facebook that they are living in Chicago, maybe they haven't had a chance to change their profile. In that instance, you could follow up with some questions to try to confirm some points on their resume. Ask questions like, "It says here that you live in Chicago, how long have you been in Chicago? Do you have plans to stay there?" Ask those questions so that you can get at what the issue is that you're actually concerned with and not just that they're lying on Facebook.

**Alicia Schoshinski:** Okay, I have another question for Yvonne. Do you see the most interview compliance issues with first-time managers, middle managers or senior managers who think they know it all?

**Yvonne Rivera:** I think it's, yes, all of the above. To be honest, it's all of the above because that senior leader has probably not even been trained on how to interview so they're not going to know and might have crazy questions. Then, you also have the middle manager who might not be trained so I think you see that at all levels. It's not because of seniority.

**Alicia Schoshinski:** I think this might be related to the question that was asked about the person living in Chicago because I think they were, from what I'm reading here, dealing with trying to verify their pay. Can an employer ask for a pay stub or W-2 to verify their current salary and also use it to get the salary offer to justify what they're doing now?

**Sadina Montani:** No, you can't. In fact, there are a number of jurisdictions now where you can't even ask what their current pay is because that really gets into gender pay equity issues and the pay bans that you're setting for a position really needs to be based on the value of the position. Obviously, you can make geographic considerations, but it needs to be standardized.

If you are making a decision to pay someone \$10,000 less because their prior salary was \$10,000 less, that is that is a big part of what local jurisdictions are trying to get at by precluding organizations from asking about prior pay. It is to make sure that organizations are not perpetually building on the inequity that exists, not only on a gender line, but also on race and national origin as well so it's an area where you should use real caution.

**Alicia Schoshinski:** Okay, great. Thank you so much. These are all great questions. That is all the time we have for today for the Q&A. We do want to thank you for attending today's webinar. We hope you found it valuable. We want to mention a couple of other things before we go. We also want to thank our speakers for leading today's discussion and to let you all know that we'll be sending out a follow-up email with today's slides and any other assets. If you'd like more information about available services, you can contact [info@nonprofithr.com](mailto:info@nonprofithr.com) or visit us on the web.

I'd also like to invite those of you who are in the D.C. area to our Talent Management Roundtable on Intentional Culture that will be held in our offices here in D.C. on March 19th. Then, for those of you who are in C-suite roles, we'd like to have you take note of our exciting CHRO Retreat, which will be held April 7th to 8th. Those are great opportunities to interact with your peers and to further discuss talent management issues, and we have a great lineup of speakers for those events as well.

Finally, a feedback survey will pop up on your screen so that we can know what you thought of today's webinar and other topics you might like us to do on future webinars. Again, thank you to our speakers and thank you so much to all of you for participating. We hope you have a great day.