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C O N T E N T S

features & departments

- 3 | USDA Announces Webinars for Nutritional Labeling
- 3 | Update on Federal Poster Requirements
- 4 | Food Entrepreneur Assistance Program
- 4 | UPDATE Regarding Federal Posters
- 6 | NGIA Annual Conference & Golf Outing
- 9 | NGIA Golf Outing Held at Quarry Oaks
- 11 | Distinguished Service & Vendor of the Year Awards
- 14-15 | Social Media & the Hiring Process
- 16 | NGIA Board of Directors 2011-2012

advertisers

- 21 | Acosta Sales & Marketing
- 10 | Advantage Sales
- OBC | Affiliated Foods Midwest
- 18 | Arctic Glacier Premium Ice
- 1 | Associated Wholesale Grocers
- 3 | Bunzl
- 5 | Cash Register Sales
- 21 | Coca-Cola
- 8 | ConAgra Foods
- 16 | Crystal Farms
- 22 | Dean Foods/Land O' Lakes Milk
- 5 | Diageo
- 18 | Dr. Pepper/Snapple Bottling Co.
- 17 | Farmland
- 7 | Frito Lay
- 3 | Gopher News Company
- 16 | Kemps
- 12 | Kraft
- 19 | Harry A. Koch Co.
- IFC | Nash Finch
- 17 | Nebraska Beef
- 18 | Nebraska Lottery
- 15 | Nebraska Pork Producers
- 4 | Omaha World Herald
- 21 | Pan-O-Gold Bakery
- 22 | Pepsi
- 19 | Retail Data Systems
- 17 | Roberts Dairy
- 13 | Sara Lee
- IBC | Shazam
- 5 | Sparboe Farms
- 15 | Smart Chicken
- 5 | The Brenmar Company
- 19 | The Mark Anthony Brands
- 20 | Wells Enterprises, Inc.
- 15 | Wimmer's Meat Products

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USDA Announces Webinars for Nutritional Labeling

On December 29, 2010, FSIS published a final rule on nutrition labeling of single ingredient meat and poultry products and ground or chopped meat and poultry products. The rule takes effect on January 1, 2012.

FSIS will host a series of webinars to provide guidance on meeting the requirements of the new regulations. The first webinar will be held Wednesday, Sept. 14, at 2 pm ET. Subsequent webinars will be held at 2 pm ET on October 12, November 8, and December 13. To access the webinars, log onto: <https://connect16.uc.att.com/usda/meet/?ExEventID=85277207> and follow the onscreen instructions.

For questions and information regarding the webinars, or if you have a problem accessing the webinar, please contact Kristin Goodwin at 301-504-0878. If you prefer, you may email her at Kristin.Goodwin@fsis.usda.gov

Update On Federal Poster Requirements

Many of our members are receiving notices that new All-In-One Federal Posters must be updated as a result of the new NLRB posting requirement. On September 8, the National Association of Manufacturers sued the NLRB to have the U.S. District Court for the District of Columbia strike down and enjoin the rule for lack of statutory authority. Also the Coalition for a Democratic Workplace, which National Grocers Association is a member, is also considering suing to have the rule struck down. Our advice to members is to wait until a decision has been made. Once the posters are required, if we have your e-mail address on file we will notify you of the new requirement. Keep in mind that because YOU are our members, we represent you to the best of our ability, and that includes a fair price for the posters. You won't find the Federal All-In-One Poster anywhere else at a lower price. Also, if you do not want to purchase a new All-In-One Poster, you can go to the Internet and print the NLRB poster free of charge. We offer the posters because of the convenience of having all federally required posters on one sheet



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Food Entrepreneur Assistance Program

The University of Nebraska Food Processing Center Food Processing Center (www.fpc.unl.edu) offers the nationally recognized Food Entrepreneur Assistance Program, specifically designed to assist food manufacturing entrepreneurs. The Food Entrepreneur Assistance Program, which was created in 1989, is widely utilized by entrepreneurs throughout the country.

It begins with a one-day "Recipe to Reality" seminar that provides entrepreneurs with an understanding of the key factors to be considered when starting a food manufacturing business. Topics include market research, product development, packaging, labeling, pricing, product

introduction, promotional materials, food safety, and legal and business structure issues. In one day entrepreneurs gain valuable insight on the basics of starting a food business that could take them months or even years to research on their own. Following the seminar, participants may choose to enter the "Product to Profit" phase of the program. During this phase entrepreneurs receive comprehensive, individualized and confidential assistance from food scientists and business consultants with the development of their own business venture.

Contact Jill Gifford, Food Entrepreneur Assistance Program Manager at 402-472-2819 or jgifford1@unl.edu for information.

UPDATE Regarding Federal Posters: New Effective Date is January 1

The National Labor Relations Board has postponed the implementation date for its new notice-posting rule by more than two months in order to allow for enhanced education and outreach to employers, particularly those who operate small and medium sized businesses.

The new effective date of the rule is Jan. 31, 2012.

The decision to extend the rollout period followed queries from businesses and trade organizations indicating uncertainty about which businesses fall under the Board's jurisdiction, and was made in the interest of ensuring broad voluntary compliance. No other changes in the rule, or in the form or content of the notice, will be made.

Member Brian E. Hayes dissented from the adoption of the final rule. For this reason, he agrees with any postponement of the effective date of the rule.

Most private sector employers will be required to post the 11-by-17-inch notice, which is available at no cost from the NLRB through its website, either by downloading and printing or ordering a print by mail.

For further information about jurisdiction and posting requirements, please see FMI's website at fmi.org under Frequently Asked Questions, which will be updated frequently as new questions arise. For questions that do not appear on the list, or to arrange for an NLRB presentation

on the rule, please contact the agency at questions@nlrb.gov or 866-667-NLRB.

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NGIA Annual Conference and Golf Outing

NGIA held its Annual Conference at the Henry Doorly Zoo in Omaha. Just as the presentation began, Zoo officials called an emergency evacuation drill. As a result, several grocers ended up learning more about the internal functions of the Zoo than they planned! After about 10 minutes we were able to ascend from the basement and return to the meeting room. Harold Lloyd presented several topics throughout the morning. The day ended with an Animal Encounter that included birds and a porcupine. Members then enjoyed themselves as they and their families visited other areas of the Zoo throughout the rest of the day.



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NGIA Golf Outing Held at Quarry Oaks

Once again golfers joined NGIA at Quarry Oaks Golf Club. With an 8:00 a.m. shotgun start, we were well into 18 holes of golf before the heat of the day. It was a great course with great golfers and everyone had a fantastic time, if not a fantastic score! Texas Hold 'Em added a little bit of excitement to the day. First place teams in 3 flights won \$50 gift certificates to the pro shop.



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Bob DeStefano Presented Distinguished Service Award

The Nebraska Grocery Industry Association Board of Directors nominated and elected Bob DeStefano to receive the 2011 Distinguished Service Award. Bob has donated his time and expertise to move the grocery industry forward. He has served on the Board of Directors of NGIA, currently serves as Chair of the Investment Committee, Chairman of the PAC Committee and has served in the recent past as the Chairman of the Legislative Committee. He has spent his career promoting the food industry. Bob has remained a strong and steady supporter of NGIA and the events the Association has held through the years. His service as Chairman of the Legislative Committee was a time consuming position that required his immediate attention to details when the Legislature was in session. As issues arose, he was called on to provide insight and direction regarding the position NGIA should take. NGIA continues to have a very strong grassroots lobbying program, due to the strength of the leadership qualities exhibited by Bob and those who have followed in his footsteps. He has remained a steady force in the food industry in Nebraska and NGIA is proud to recognize his efforts by presenting him with the Distinguished Service Award.



Rod Anderson Recognized as Vendor of the Year



Rod Anderson of ConAgra Foods was presented with the Vendor of the Year Award during the NGIA Annual Conference. Rod is well known by members of the food industry. He has served on the NGIA Board of Directors for the past two years. He readily steps forward when asked and represents the food industry well. Rod is an upstanding citizen and serves as a role model for others in the industry. NGIA extends its sincere thanks to Rod for his willingness to serve wherever help is needed and his support of NGIA and the events that are held throughout the year.



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Social Media and the Hiring Process

by Jack L. Shultz

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Lincoln, Nebraska

The recent resignation of Representative Anthony Weiner (D-NY) underscores the fact that social media may provide too much information on occasion. Representative Weiner's resignation, however, serves as a reminder to all employers to tread cautiously when utilizing social media to conduct background checks on applicants. Social media tools such as Twitter, Facebook and LinkedIn do provide employers with a great deal of information about job applicants. However, in light of the restrictions placed upon employers by Title VII and other anti-discrimination state and federal laws, employers need to be careful to not obtain "too much information."

THE PROHIBITION

The prohibition found in state and federal law is simply that employers not discriminate against employees in protected classes who are making hiring decisions. For example, Title VII prohibits discrimination in making hiring decisions because of an individual's "race, color, religion, sex or national origin." Nebraska state law adds the protected class of "marital status" and both state and federal law add the additional protected classes of "age (40-70 years), pregnancy and disability." Anti-discrimination provisions are also found in the Family and Medical Leave Act and the Fair Labor Standards Act. Active discussion has taken place and will continue to take place about adding additional protected classes to both state and federal law.

THE PROBLEM

As evidenced by Representative Weiner's conduct, individuals post a wide variety of information on their Facebook accounts, comment about numerous topics on their Twitter account and do both on LinkedIn. It is obvious that applicants may make comments which clearly identify them as being a member of one of the protected classes listed above or one of the other protected classes listed in other state or federal laws. Some employers routinely check on job applicants through such social media tools leading to the possibility that "too much information" might be obtained by the individuals who make the hiring decisions. Without more, a social media search, which identifies an applicant as being a member of a protected class, could lead to the filing of discrimination charges if the applicant is not selected for employment.

THE SOLUTION

The key element of any employer's defense to a charge of discrimination is centered on a clear explanation of the job at issue. All employers should have a clearly written position description which defines job duties and any necessary education or certification required to perform the job duties. The position description should be current and accurate. Questions asked during the hiring process should be based on the position description and applicants should be ranked based upon how well they fit the position in question. An objective analysis should be made in every instance where it is possible to do so. Subjective factors may also be used but should be based upon the job duties and the relationship of the subjective criteria to being able to successfully perform such job duties.

THE PROCESS

Employers should make a decision on what kinds of background checks are going to be undertaken and whether social media tools will be used. The process should be written and distributed to all employees who are involved in the hiring process. Just like an application blank should be developed which requests information relevant to the position in question, employees involved in the hiring process should also be given a set of questions to ask all applicants which relate to the job in question. Information obtained through social media tools should only be added to the background check information if it relates directly to the job duties for the position being sought. Some employers make it a point to have the background check performed by different employees of the employer or a subcontractor. In either instance, it is prudent to instruct the individual or individuals performing the background check to exclude from their report any social media information which identifies an applicant as being a member of a protected class.

CONCLUSION

The bottom line is that employers should base hiring decisions on the abilities and qualifications of an applicant to perform successfully the job duties of the position being sought. The fact that an applicant happens to be a member of a protected class under either state or federal law is not relevant and employers should be careful to avoid obtaining "too much information" if social media tools are used for background checks as such information might identify the protected class status of an applicant. Since social media

tools are readily available and easily checked, employers may decide to use such social media tools to perform background checks on applicants. There is nothing inherently illegal in taking this approach, but employers should develop a carefully constructed hiring process which focuses on job duties not protected class status even if background checks are conducted at least in part by using social media tools. The failure to take these steps might result in state or federal court litigation which might be as challenging as the situation recently faced by Representative Weiner.

Editor's Note: This article is not intended to provide legal advice to our readers. Rather, this article is intended to alert our readers to new and developing issues and to provide some common sense answers to complex legal questions. Readers are urged to consult their own legal counsel or the author of this article if the reader wishes to obtain a specific legal opinion regarding how these legal standards may apply to their particular circumstances. The author of this article, Jack L. Shultz, can be contacted at 402/434-3000, or at Harding & Shultz, P.C., L.L.O., P.O. Box 82028, Lincoln, NE 68501-2028, or jshultz@hslegalfirm.com.



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Phone: 402-453-2468
Fax: 402-453-4513
Cell: 402-657-1152
dick-cosaert@cubbys.com

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No Frills Supermarkets
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Phone: 402-399-9244
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Cell: 402-578-6917
fwitecy@nofrillssupermarkets.com

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Minden, NE 68959-0149
Phone: 308-832-1741
Fax: 308-832-1741
5thstreetiga@gtmc.net

Executive Director

Kathy Siefken
Nebraska Grocery Industry Assoc.
5935 S. 56 St., Suite B
Lincoln, NE 68516-3301
Phone: 402-423-5533
Fax: 402-423-8686
Cell: 402-525-7506
ksiefken@nebgrocery.com

Directors:

Mike Brtek (Nancy) (2013) (1995)
Lou's Thriftyway
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Norfolk, NE 68701-5753
Phone: 402-371-5105
Fax 402-371-3053
lous@telebeep.com

Mark Hutson (Cheri) (2014) (2011)
Save Mart
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Lincoln, NE 68521
Phone: 402-435-1000
Fax: 402-435-4594
savemart@neb.rr.com

Pat Hensley (Jennifer) (2011) (2000)
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phensley@hy-vee.com

Maurice Jantze (Linda) (2013) (1993)
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Phone: 402-761-2014
Fax: 402-761-2267

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Cell: 308-325-4440
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Bob Maline (Sherry) (2011) (2004)
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Associates:

Rod Anderson (2012) (2009)
Director of Sales Development
ConAgra Foods
5 ConAgra Drive 5-236
Omaha, NE 68102-5002
Phone: 402-595-6752
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rod.anderson@conagrafoods.com

Jim Rotella (2013) (2010)
Rotella's Bakery
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LaVista, NE 68128-5703
Phone: 402-592-6600
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Wholesalers:

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Fax: 402-597-2449
tedstessman@farner-bocken.com
Steve Pirtle (2009)
Associated Wholesale Grocers
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Phone (cell) 402-429-7799
spirtle@awginc.com

Bob DeStefano (2004)
Nash Finch
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Omaha, NE 68127-1857
Phone: 402-339-7300
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bob.destefano@nashfinch.com.

Kelly Dingwell (Jim) (2005)
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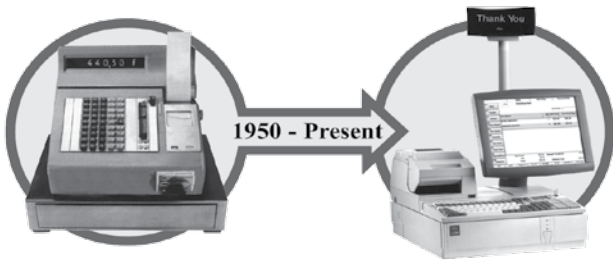
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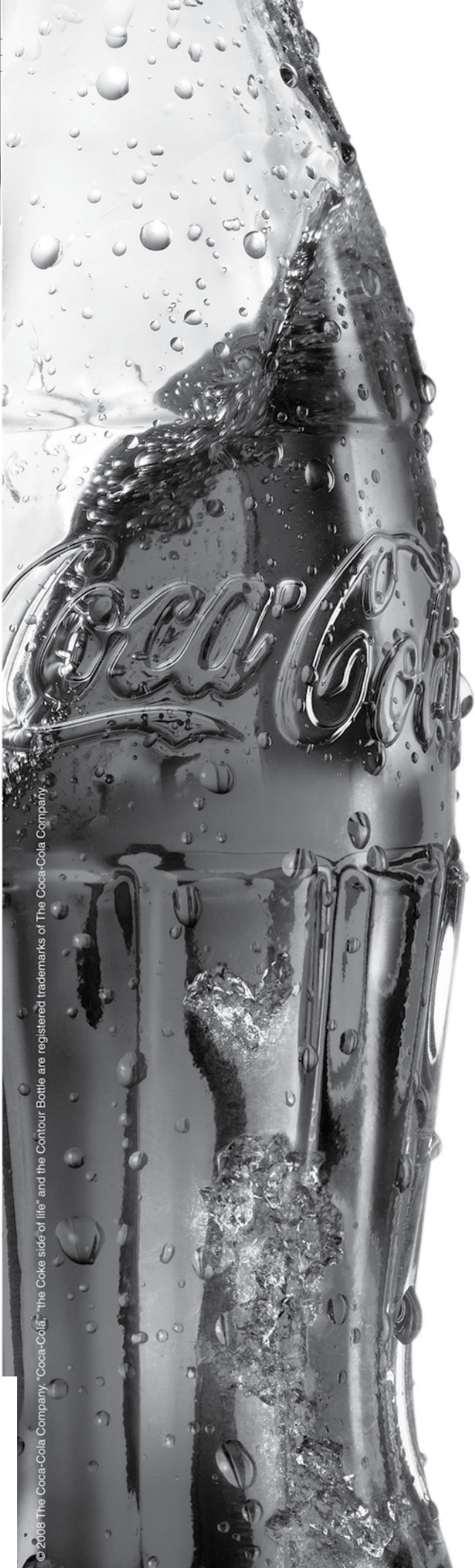
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