

# The Price of Technology is Responsibility: A Discussion of Threats Created by Cybervetting That Employers Must Address to Ensure Equal Employment Opportunity

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**THE PRICE OF TECHNOLOGY IS RESPONSIBILITY:  
A DISCUSSION OF THREATS CREATED BY CYBERVETTING THAT EMPLOYERS  
MUST ADDRESS TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY**

**Introduction**

Wilcox, Damarin, and McDonald (2022) provided a thorough overview of the risks to equal employment opportunity that are posed by cybervetting, recognizing that responsibility for ensuring equity in cybervetting should fall on hiring agents and organizations. Contrary to this positioning, however, their recommendations for improving the outcomes of cybervetting are much more specific for job candidates than they are for other entities. We respond to these recommendations by arguing that members of protected classes should not be burdened with attempting to correct inequitable cybervetting practices and we provide more specific guidance on key unaddressed issues that employers should incorporate into screening protocols to ensure that cybervetting does not compromise equal employment opportunity.

**Members of protected classes should not have to shield social identities**

One concern with the recommendations that Wilcox et al. (2022) provided for job candidates to improve cybervetting outcomes is that they appear to charge candidates with responsibility for masking their identities as members of protected classes. Though the authors were clear to “stress the responsibility of hiring agents and organizations to reshape cybervetting practices,” (p. 23) they still placed considerable burden on job candidates with recommendations such as to strip their social media accounts of “any information regarding any religious affiliation” (p. 23). This type of recommendation is problematic for multiple reasons.

To begin, what does this recommendation even mean? Is it calling for job candidates to mask names with religious meaning on social media? Is it suggesting that all pictures in which an individual is wearing attire that may communicate religious associations (such as a hijab, turban,

or necklace with a religious symbol) be removed from one's online presence? Is it recommending that all potential job candidates refrain from posting pictures with their family at religious milestones such as a baptism or bar mitzvah? Is this recommendation going so far as to suggest that candidates refrain from posting wedding photos if they are married in a religious institution? When religion is important to one's identity, it is incorporated into life activities in such a way that removing "any information regarding any religious affiliation" is both a cumbersome and potentially demeaning recommendation.

This type of "how to" narrative inaccurately portrays resolving discriminatory practices as a shared burden between the target and initiator (Holmes IV, 2020). While it may be made with the best of intentions, a recommendation from subject matter experts that potential targets of discrimination manage perceptions of their religious affiliations is likely to heighten the salience of stereotype potential, leading to increased anxiety and negative job market outcomes (Steele, 1997). Rather than hold job candidates to the expectation that they will purge evidence of religious associations from their social media accounts, we argue that *employers* should implement policies prohibiting engagement in cybervetting practices that have a reasonable likelihood of disclosing candidates' social identities.

### **Posts depicting alcohol use, protected status, and the ADA**

Wilcox et al. (2022) acknowledged that employers may view screening out applicants due to posts depicting alcohol use as a form of "risk-management" (p. 11) as such posts may be indicative of a candidate's potential "to be an alcohol abuser" (p. 20). While they recognized that such interpretations may be inaccurate, they omitted from discussion the potential for this type of screening to violate the Americans with Disabilities Act of 1990 (ADA). Under the ADA, a qualified applicant with alcohol use disorder (AUD) is a person with a disability who is protected

against discrimination (U.S. Department of Justice, 2020). Because alcohol abuse falls under the umbrella of AUD (National Institute on Alcohol Abuse and Alcoholism, 2021), cybervetting with the intent of identifying candidates' potential "to be an alcohol abuser" could be perceived as targeting candidates who are protected under the ADA.

While some interpretations of the ADA suggest that employers may consider an applicant's current alcohol abuse in hiring decisions<sup>1</sup>, it is clear that an individual with AUD is protected under the ADA if they are in recovery (Henderson, 1991). Consequently, if employers choose to consider past social media posts depicting alcohol use in hiring decisions, they should also assume the burden of verifying that these posts are indicative of current behavior, and that this behavior would interfere with a candidate's ability to meet job requirements. Such verification, however, would likely require inquiry regarding a candidate's disability, which is prohibited under the ADA (EEOC, 1992). In some cases, employers may successfully argue that job duties incorporate being a role model or brand ambassador, and thus they specifically require a candidate to maintain a positive public image (Mook & Powell, 1996), but the cases in which such justification would apply are limited.

This argument may leave the reader wondering, what about candidates who post pictures depicting alcohol use, but do not have AUD? Employers should remember that even individuals who are *perceived* as having an impairment that limits major life activities, such as work, are protected under the ADA (EEOC, 1992). If an employer doesn't believe that an individual's alcohol use will impair their ability to perform job duties, one must wonder why evidence of a candidate's *legal* consumption of alcohol would be relevant to employment decisions at all. Given the limited benefits and considerable legal and ethical concerns described above, we

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<sup>1</sup> We are not agreeing with this interpretation of the law but are simply acknowledging that it exists

recommend that employers implement cybervetting policies that prohibit consideration of social media posts depicting legal alcohol consumption.

**Implementation of controls on cybervetting should more effectively account for systematic discrimination**

While we appreciate Wilcox et al.'s (2022) recommendation that hiring agents should link cybervetting to job responsibilities, we fail to see this alone as sufficient remediation for the threats to equal employment opportunity that employers introduce when they choose to engage in cybervetting. We believe that it is incumbent upon employers to proactively eliminate discriminatory cybervetting practices. This call goes beyond simply considering cybervetting practices in which hiring agents become aware of candidates' social identities, but it requires organizations to identify practices that are most likely to be influenced by systematic discrimination and eliminate them, even if these practices can be linked to job responsibilities.

For example, Wilcox et al. (2022) discussed the use of LinkedIn to identify recommendations, endorsements, and network size of job applicants. Such information, however, is likely to be influenced by structural discrimination as social networks are often homogenous in nature (Leonard, Levine, & Joshi, 2004) and recognition can be influenced by demographic traits (Obenauer & Langer, 2019). Thus, evaluating candidates based upon their LinkedIn network size and endorsements perpetuates workplace discrimination in the same way that determining a new employee's compensation package based upon their compensation history does. Consequently, we recommend that employers implement cybervetting policies that prohibit consideration of an applicant's LinkedIn network and interactions.

Wilcox et al. (2022) also reported that some job agents feel cybervetting is ethical when consent is provided by job candidates. Considered within the context of their discussion about

prior experience with discrimination leading candidates to make concessions on the job market, it is reasonable to expect that candidates who have previously been targets of employment discrimination may feel additional pressure to authorize review of their social media accounts. Thus, even the process of requesting consent for cybervetting may be riddled with inequities. Therefore, employers should not implement “consent to cybervet” policies as a means of justifying potentially discriminatory cybervetting practices. These examples do not represent an exhaustive list of the concerns that employers must address in cybervetting, but instead, they provide examples of the types of often unrecognized threats to equal employment opportunity that organizations must consider when developing cybervetting policies.

### **Conclusion**

We close by saying that we fully support Wilcox et al.'s (2022) assertions that because cybervetting poses serious threats to equal employment opportunity, it should be avoided by organizations and that it is incumbent upon federal agencies to provide a set of clear guidelines for equitable implementation of cybervetting. Where we diverge from their recommendations, however, is that while they suggest that organizations who refuse to abandon cybervetting should prioritize aligning cybervetting with organizational objectives, we contend that these organizations should *prioritize ensuring equal employment opportunity*. There is no benefit great enough to justify cybervetting if the cost is discrimination. Cybervetting has not created a need for new principles of equal employment opportunity; it has simply created a new context within which existing principles must be applied. While Wilcox et al. (2022) may be accurate in their assumption that despite recognition of risk, some organizations will not voluntarily abandon cybervetting, it is critical to acknowledge that organizations that continue to engage in

cybervetting assume both the legal and ethical responsibilities of implementing policies and procedures that support equal employment opportunity.

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