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Julia I. Zibulka-Horwath

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Using Facebook Profiles for Cybervetting: Legal Issues, Ethical Concerns, and Cognitive Biases that Influence Data Interpretation

Julia I. Zibulka-Horwath, M.S./I-O Psy
University of Phoenix

ABSTRACT

Social media is becoming increasingly important for use in organizations as a selection tool. Cybervetting involves screening job applicants by using information retrieved from the internet, including social media sites such as LinkedIn or Facebook. The information in this work-in-progress report covers cognitive biases that were identified during research for a dissertation proposal to investigate how information from Facebook may influence hiring decisions. The majority of articles on organizational use of social media for hiring purposes focus on the potential for violating Title VII of the Civil Rights Act (Title VII) and other laws designed to prevent discriminatory hiring practices. Other articles provide suggestions for reducing the chances of violating employment laws when using social media for selection. However, few authors discuss the cognitive biases that may occur while viewing social media and how they can lead to violations of EEOC laws or ethical norms. Prospect theory and loss aversion explains why hiring managers use Facebook data to avoid making negligent or risky hires. Cognitive biases, such as impression formation, implicit bias, confirmation bias, and conjunction fallacy, are hypothesized to influence the individual interpretation of data and may lead to unethical use of such information during the cybervetting process. Impression management explains how applicants may engage in biased or unethical behaviors when providing information. Suggestions for future research include testing the malleability of impression formation by providing raters with conflicting social media profiles, modifying existing studies on implicit bias by having employers view social media, and replicating studies on impression management by using subjects and raters that are more representative of the workplace.

KEYWORDS

Prospect theory, Impression formation, Confirmation bias, Conjunction fallacy, Implicit bias, Impression management.

INTRODUCTION

Hiring managers and other Human Resource professionals are responsible for screening job applications to find the best-qualified candidates. One method of screening prospective employees is cybervetting, which involves using information retrieved from the internet, such as social media sites (Berkelaar, 2014). The information in this paper covers information on cognitive biases that were identified during research for a dissertation proposal to investigate how information from Facebook may influence hiring decisions. There are several articles in which the authors discuss the ethical and legal consequences of using social media data because of the potential for violating Title VII of the Civil Rights Act (Title VII) and other laws designed to prevent discriminatory hiring practices. Such literature includes law review articles, industry white papers, and studies on the predictive use of social media data. However, few authors examine the cognitive biases that may occur when viewing social media and can cause hiring managers to violate EEOC laws or breach ethical norms. Based on the existing data, it is hypothesized that cognitive biases can influence how individuals interpret data found on social media profiles and the information people choose to share on their profiles. Thus, this work-in-progress report provides a summary of cognitive biases and their relevance to social media, along with suggestions for future research to investigate the influence of cognitive bias on the interpretation of social media information.

LEGAL AND ETHICAL ISSUES ASSOCIATED WITH CYBERVETTING

Since the advent of social media, there have been many articles published concerning the legal and ethical violations that can occur when using such data for hiring and employee discipline. One topic is the requirement for job applicants to provide organizations with their social media passwords. Social media profiles that are open to public view are considered public domain; access to public profile data is legal (Baumhart, 2015; Byrnside, 2008) and does not require consent if the search is conducted in-house (i.e., not part of a third-party background check) (Sánchez-Abril, Levin, & Del Riego, 2012). As job seekers began to use security settings on their social media profiles to prevent unauthorized access to their private information, employers started to request social media passwords to facilitate the cybervetting process. Sharing social media passwords with others breaches the user agreement between the social media platform and the employee who is the subject of the screening (Delaney, 2013; Lam, 2016; Strumwasser, 2014). Job seekers who are asked to provide

prospective employers with passwords are essentially being asked to choose between breaking the law and passing on a chance at gainful employment. Twenty-one U.S. states have passed laws preventing employers from asking for social media passwords as of 2015 (Hart & Milligan, 2015). However, employers can bypass these laws by connecting with applicants on social media sites, which provides unrestricted access to individuals' information. It is not illegal to make connections with applicants on social media but the ethical implications of the act are certainly questionable. Applicants may feel pressured into accepting friend requests from potential employers out of fear that denying a request will cost them the desired position.

Another topic is the ethical implications of using social media sites designed for non-business-related communication for screening and selection. Employers use sites designed for personal or casual communication, such as Facebook or Myspace, to make predictions of organizational fit and personality (Back et al., 2010; Chauhan, Buckley, & Harvey, 2013; Goodmon, Smith, Ivancevich, & Lundberg, 2014; Kluemper, 2013; Kluemper, Rosen, & Mossholder, 2012). Some hiring managers use these sites in addition to business-related social media networks, such as LinkedIn, to gather additional information on candidates (Ollington, Gibb, & Harcourt, 2013). However, these sites contain information that cannot be used in hiring decisions in the United States. Title VII prevents the use of race, national origin, gender, religious affiliation, and sexual orientation in hiring decisions, whereas the Age Discrimination in Employment Act (ADEA) discourages discrimination against people over 40 (Bentley, 2013; Pate, 2012; Whitehill, 2012). The Americans with Disabilities Act (ADA) not only prevents discrimination against disabled job applicants but also forbids organizations from searching for an applicant's disability status (Baumhart, 2015). Yet, employers can access almost any piece of protected information about an applicant by looking at his or her Facebook profile page. It is important to note that with the exception of disability status, it is not illegal to search for or inquire about race, gender, religion, sexual orientation, or national origin; it is only illegal to make employment decisions based on such criteria (The U.S. Equal Employment Opportunity Commission, 2016). Even if it is legal to access protected data, organization leaders should question the ethical implications of allowing hiring managers to access this information during the screening process.

THE NEED FOR INFORMATION

Some employers seek to obtain as much information about a prospective hire as possible, even when doing so pushes the boundaries of ethical behavior. Why do employers take such risks? One possible explanation is Kahneman and Tversky's (1979) prospect theory, which was developed when the authors noticed that people faced with making decisions make inconsistent choices when the options are framed in terms of gains and losses. Risk adverse people tend to focus on avoiding loss rather than making gains, especially when the decision influences future actions (Kahneman & Tversky, 1979). Hiring and training new employees requires a substantial investment on the part of the employer; unless the position is a temporary one, employers expect the hiring of new people to have long-range influences. Selecting a person who is a poor fit increases the potential for significant loss of both time and money invested into him or her. Additionally, a negligent hire involves hiring a person who causes harm to other employees or the organization; such hires create a legal liability for the organization if there is evidence that such maladaptive behavior existed before the individual was hired (Lam, 2016). Searching through a prospect's social media could reveal information that would indicate violent tendencies.

Thus, hiring managers and other human resource professionals are susceptible to prospect theory when screening employees because they are looking to avoid losses for the organization. To avoid hires that could result in losses, hiring managers use Facebook to look for any information that may be indicative of a risky hire and will use the data to eliminate people from the candidate pool. Pictures and posts about current and previous employers as well as movie and music preferences can provide the organization with exclusionary data. For example, a candidate who posts pictures of himself or herself at a party when he or she called out sick is indicative of dishonesty; people who like violent action movies may be perceived as having violent tendencies. Since the focus of most social media screenings is to find exclusionary data to avoid a bad hire instead of making a good hire (Kuhn, 2015), highly qualified applicants are often eliminated during the screening process. The elimination of qualified applicants is caused by the way social media information is processed by the viewer.

FACTORS INFLUENCING DATA INTERPRETATION

When hiring managers view social media profiles, the way the information is processed depends on his or her individual beliefs and personality traits. The subjective nature of interpreting social media data exposes the cybervetting process to cognitive biases that influence how the individual perceives the data and makes conclusions. Some of the cognitive biases at work when viewing social media include impression formation, confirmation bias, conjunction fallacy, implicit bias, and impression management.

Impression formation and confirmation bias

When reviewing resumes and other sources of information about applicants, hiring managers form an impression of the candidate. Thorndike first wrote about impression formation in his paper on the halo effect in 1920. He found that people might form an overall good impression about an individual based on one piece of positive information. The reverse halo effect or horns effect was developed to describe the opposite phenomenon of people forming a negative impression of someone based on one piece of negative data (Remmers & Martin, 1944). For example, a hiring manager might form an impression of a candidate based on a meme posted on his or her Facebook page. The positivity or negativity of the impression is based on the hiring manager's subjective reaction to the meme material.

Asch (1946) conducted further studies on impression formation by investigating how impressions are formed and the malleability of impressions. The results of these studies not only confirmed the halo and horns effects, but also showed that people typically form impressions based on the first piece of information they view about a person. Furthermore, the impressions formed about people are fixed, even in the face of additional or contradictory data (Asch, 1946). The rapid formation and permanency of impression formation is particularly problematic when adding social media data into the equation. Zebrowitz (2017) found that people form impressions of others' personalities based on their facial features; for example, attractive candidates were considered competent whereas unattractive candidates were considered incompetent. The consequence is hiring managers will use Facebook information to form an impression about a candidate based on data that has nothing to do with his or her ability to perform the job. Worse, if the hiring manager is looking at a profile for a different person with the same name, the erroneous impression that is formed is not likely to be changed because people have the tendency to reject data that does not support their initial impressions (Asch, 1946).

The propensity to ignore contradictory data once an impression or decision has been made is described by Wason (1960) as confirmation bias. When looking for information on social media, people select the information that supports their choice and reject contradictory data (Winter, Metzger, & Flanagin, 2016). Furthermore, people become more susceptible to confirmation bias when the number of options from which they have to choose is overwhelming; confirmation bias also occurs when the available options are too similar (Brooks, 2011). The internet and online hiring processes have made it easier for large numbers of people to apply for jobs, resulting in larger numbers of applicants. Additionally, increased access to higher education has resulted in more applicants with similar education and qualifications.

Conjunction fallacy and implicit bias

Another issue to consider in the cybervetting process is how the hiring manager interprets the data. One cognitive bias that can influence how data is interpreted is conjunction fallacy, in which people misjudge the probability that two separate piece of information are somehow connected (Tversky & Kahneman, 1983). For example, some people equate rap music with ties to gang activity or heavy metal music with devil worship. People who make such conjunction fallacies believe enjoying these types of music increases the likelihood that the applicants partake in the lifestyles often associated with these forms of music. Moreover, such biases can occur without the individual being aware they are engaging in biased thought processes.

The theory of implicit bias describes how biased and discriminatory thoughts occur on a subconscious level (Greenwald & Banaji, 1995). Attitudes and stereotypical beliefs may be reflected in the choices people make. For example, a hiring manager does not hire anyone named Janine because his ex-fiancée (with whom he had a painful breakup) was named Janine. The implication of implicit bias is that the hiring manager is not aware that he is automatically passing over applicants with the same name as his ex-fiancée. Greenwald and Krieger (2006) wrote a law review article on the role implicit bias plays in discrimination in the hiring process; they found that hiring managers reviewing candidates who are from outgroups (i.e., people who are from different social, racial, national, or religious groups than that of the hiring manager) may make decisions based on stereotypical data. The amount of information available about candidates because of social media may only serve to increase the likelihood of implicit biases influencing hiring decisions.

Impression management

The data used to make predictions of candidates' job-fit, organizational-fit, and job skills may be missing from Facebook profiles because its primary use is casual communication. Furthermore, there is the possibility that information on applicant social media profiles are not true representations of their personalities. Impression management is the act of modifying one's persona to reflect and fit in with the current environment (Goffman, 1959). For example, a person may behave quietly around her reserved grandparents but will be loud and outgoing with friends. Impression management extends beyond day-to-day life to an individual's online life.

Recent studies have shown that applicants actively engage in impression management of their social media profiles to increase their chances of receiving invitations to interview for jobs (Berkelaar & Buzzanell, 2015; Hall, Pennington, & Leuders, 2014; Vogel & Rose, 2016). People can artificially give the impression of sociability by inflating the number of connections they have through game applications. Job seekers often engage in profile scrubbing when they know there is a possibility of being cybervetted (Berkelaar & Buzzanell, 2015). In short, impression management renders cybervetting useless because hiring managers have no way of knowing if the data genuinely reflects the candidate or if the candidate is presenting the persona that is most appealing to the organization.

FUTURE RESEARCH

In spite of the increased use of social media as a cybervetting tool, the existing literature still contains a significant gap where the influence of cognitive biases on the interpretation of data obtained from social media is concerned. Future work should include experiments designed to investigate the hypothesized influence cognitive bias has on data interpretation. For example, Asch's theory of the fixed nature of impression formation can be tested by having HR professionals review the Facebook profile of an applicant (containing either positive or negative information) and then informing them the wrong profile was provided. After providing the "correct" profile (which contains the same applicant name but information that is opposite of the first profile), the subjects would then review the applicant's résumé and give their impression. Existing studies on implicit bias could be adapted to accommodate examinations of social media use. Rooth (2010) conducted a study in which Swedish employers completed surveys to express their explicit preferences when choosing between native Swedish applicants and applicants of Middle-Eastern decent; the employers then selected who they would hire after reviewing applicant résumés and took the Implicit Association Test (IAT). The results showed that although the employers did not explicitly state a preference for native Swedes, their IAT results and their selections showed that a majority of employers held negative biases toward applicants of Middle-Eastern decent (Rooth, 2010). A study modified for an American sample could have employers review Facebook profiles instead of résumés, choose an applicant, and then take the IAT.

It would also be beneficial to reexamine previous social media studies on personality prediction and make them applicable to the organizational setting. For example, Back et al. (2010) found that Facebook profiles provided an accurate representation of an individual's personality. However, the sample population consisted of college students between 17 and 22-years-old instead of job seekers. It is possible that people seeking employment are more likely to engage in impression management on their social media profiles when they know prospective employers will look. Because the sample in Back et al.'s (2010) study were university students, they may not have been looking for work; the researchers also saved copies of the subjects' social media profiles before they were told they would be reviewed. Additionally, the raters who assessed the Facebook profiles were undergraduate research assistants who may have interpreted the social media information differently than HR professionals would. A suggestion for replicating Back et al.'s (2010) study to investigate cybervetting and impression formation is to recruit active job seekers for the sample and use HR professionals to act as raters.

CONCLUSIONS

It is in any organization's best interest to gather as much information as possible about applicants to ensure the best people are hired. However, the interpretation of data from Facebook and other forms of casual social media is subjective because of the influence of cognitive biases. Thus, there may be too many ethical ramifications to provide substantial benefits. Prospect theory shows that hiring managers tend to be more focused on avoiding bad hires than making good hires. They may use Facebook to search for exclusionary information that has no correlation with job skills or performance, which causes highly qualified candidates to be overlooked. Some believe that social media is a good way of judging or predicting applicant's personality traits, but the interpretation of social media profiles is subjective from the assessor's point of view. Current research supports the supposition that social media does not provide valid or reliable predictions of personality traits.

Impressions of candidates are typically based on the first piece of information a hiring manager notices. The subsequent searches through social media may be limited to data that supports this first impression while additional relevant information is excluded. Such impressions are usually permanent, even if they are based on erroneous data. Social media can also influence implicit attitudes and stereotypical thinking by providing hiring managers access to information that is not protected by antidiscrimination laws, such as political beliefs. Conjunction fallacy can also shape how social media data is interpreted by making assumptions based on several pieces of unrelated information. For example, hiring managers may believe that applicants who engage the security settings on their social media accounts so their data are not available may have something to hide.

It is legal to access an individual's social media information when the account is open to public access, and current U.S. employment laws do not require organizations to disclose the use of social media data to applicants for in-house searches. Still, the ethicality of using social media to cybervet applicants is suspect. Those responsible for hiring decisions must consider how exposure to protected information and data that is not relevant to the job will affect their choices. In-house cybervetting is more cost effective than third-party criminal background checks and traditional personality assessments, but it is subjective and lacks established validity. Misuse of social media information in the hiring process also increases organizations' susceptibility to disparate impact (which Heneman, Judge, and Kammeyer-Mueller (2014) define as discriminatory outcomes caused by an organization's practices, regardless of intent) and discrimination lawsuits. Thus, organizations must question the legal and ethical consequences of using social media (especially sites that are not intended for business networking, such as Facebook) to vet job candidates. Finally, future research should focus on investigating the influence of cognitive bias on the cybervetting process to fill gaps in the existing literature.

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AUTHOR BIOGRAPHY

Julia Zibulka-Horwath is a doctoral student at the University of Phoenix studying for her Ph.D. in Industrial-Organizational Psychology. She is currently working on her dissertation proposal, which focuses on the development of an experiment for investigating how information from job candidates' Facebook profiles may influence hiring decisions. Ms. Zibulka-Horwath can be reached at juliaihorwath@gmail.com.