

Blog Post

Big Brother is Watching You: Feds Now Vetting Foreign Workers Via Social Media

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Employers may need to start “following” the information their foreign national workers share on Twitter or Facebook, as the Department of Homeland Security is turning social media into the federal government’s latest surveillance tool. In October, the Modified Privacy Act System of Records was quietly implemented placing Facebook likes, interests, friends, Instagram photographs, Twitter tweets, work information shared on LinkedIn and even Tinder activity into agency officials’ new dossiers on immigrants—information gathered directly from social-media profiles. The new surveillance program authorizes Homeland Security to collect and store “social-media handles, aliases, associated identifiable information and search results” in the permanent immigration files and official government records of all foreign nationals entering the United States, *including permanent residents and naturalized citizens*.

Immigration officials will collect such data from “publicly available information obtained from the internet, public records, public institutions, interviewees, commercial data providers”—part of what agency officials contend will provide more effective screening of foreign persons coming into the United States. The fact that information found on Facebook and other social-media networks may not be accurate doesn’t mean Homeland Security will be precluded from using it as a basis for excluding people from the United States.

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Privacy advocates fear the regulation could extend government surveillance to U.S. citizens who communicate over social media with immigrants, which can include employers. Considering the breadth of social media forums available online, coupled with the government's initiative to conduct "more immigrant actions in an electronic environment," employers should be aware that government officials will be looking to ensure that data and background information submitted by employers in support of workers' visa petitions matches the information found on Google, Facebook, or other publicly available social media networks. Employers should also be cautious of communications over social media prior to hire.

Homeland Security published the new rule in the Federal Register on the heels of reports that Customs and Border Protection officials were enforcing enhanced electronic device searches of international travelers entering the United States. In the first six months of 2017, CBP announced it had "searched the electronic devices of 14,993 arriving international travelers [...] of the approximately 189.6 million travelers arriving to the United States each day." In a press release issued earlier this year, CBP claimed the increase of electronic surveillance measures at the border had led to "evidence helpful in combating terrorist activity, child pornography, violations of export controls, intellectual property rights violations, and visa fraud." The CBP's use of warrantless electronic device searches at the border has been repeatedly upheld on statutory and constitutional grounds. More information on electronic device searches at the border is available [here](#).

Despite the statistics, many commentators view social media surveillance as an unnecessary intrusion that would do little to wane national security concerns. The upshot of the new surveillance program means U.S. employers who depend on foreign labor should expect the

government to actively search, follow and view the Facebook, LinkedIn, Instagram and other social media profiles connected to foreign workers sponsored for employment authorization in the U.S. Employers should work closely with experienced immigration counsel and foreign nationals to ensure that employment history, occupational titles and job duties posted on employees' social media accounts are consistent with employment information submitted to immigration agency officials.

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