



# GET OUT OF MY FACE...BOOK!

*An HR Social Media Training*

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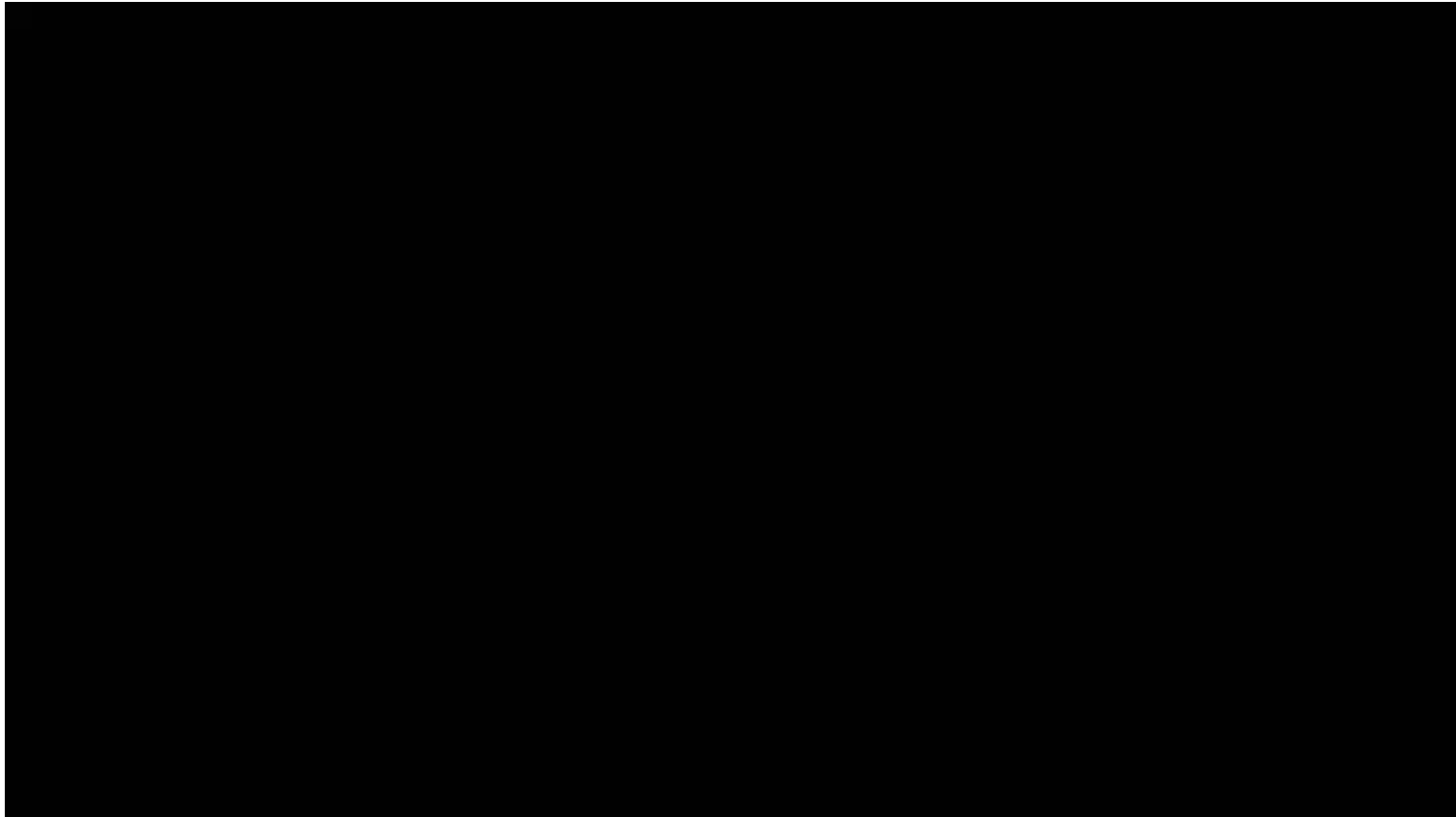
**HRSOLUTIONS**  
*human resource management*

# SESSION GOALS & INFO



- ⦿ Provide an informative overview of important ways social media impacts HR
- ⦿ Keep you (moderately) engaged & awake!
- ⦿ For purposes of this training, the following shorthand will be used:
  - EE = Employee
  - ER = Employer

# SOCIAL MEDIA PREDICTION



# TECHNOLOGY CHANGES

- ⦿ Rapid changes often require rapid (but thoughtful) responses
- ⦿ 1876 → 1933 → 1964 → 2005 → 2007
- ⦿ And Social Media
  - #figuringthisoutisdrivingmecrazy

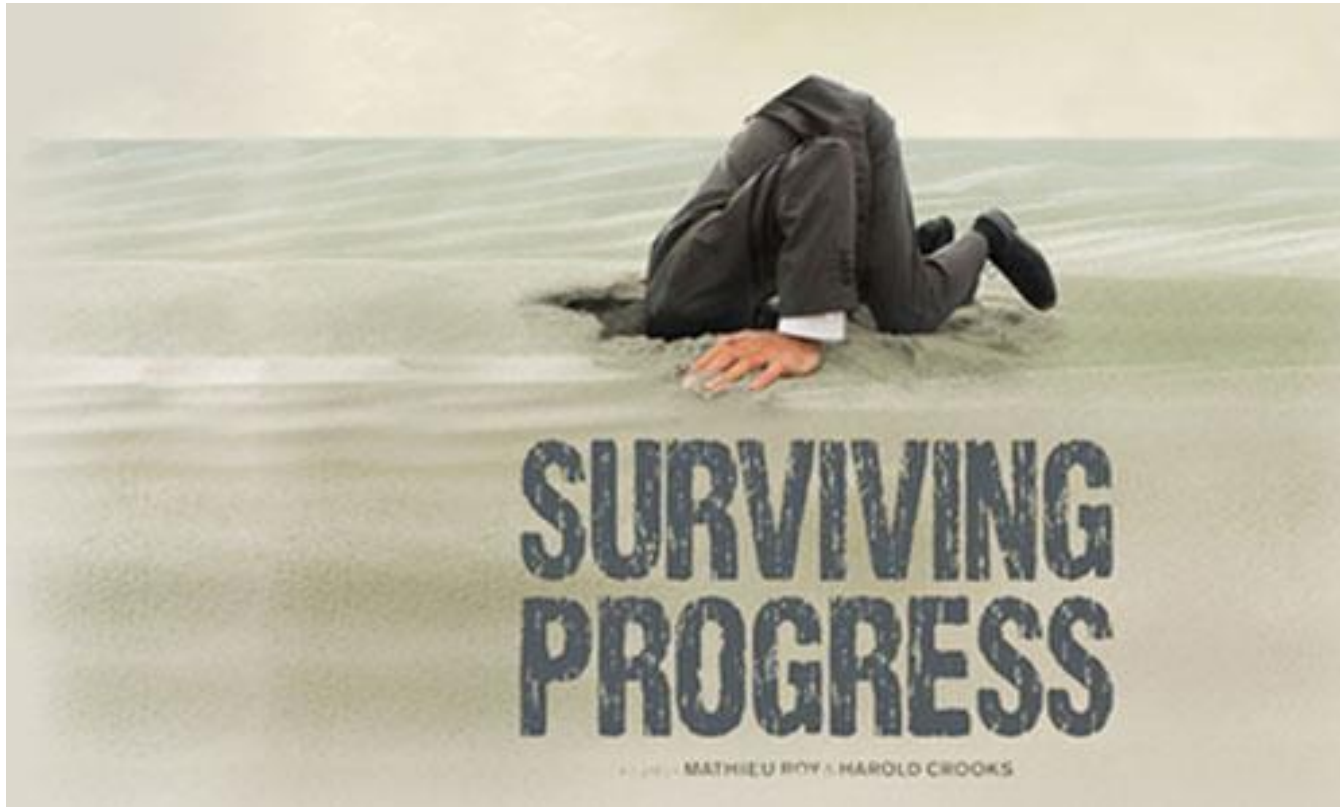


# IMPACT ON EMPLOYERS & HR

- ◉ New ways to communicate
- ◉ Culture changes
- ◉ More “time wasting” mechanisms for EE’s
- ◉ Application of old laws on new technology
- ◉ New laws with which to comply
- ◉ Innovations for recruiting
- ◉ Risks of finding out “too much” about an applicant or EE
- ◉ Need to create, implement and enforce new policies
- ◉ What else???



# RESPONSE OF MANY EMPLOYERS



# EMPLOYEE PROTECTIONS



## ◉ State Laws

- Prohibit ER's from requesting that EE's provide passwords to personal social media accounts

## ◉ National Labor Relations Act

- Provides EE's the right to engage in 'protected and concerted activity' regarding the 'terms and conditions of their employment'
- The Board that oversees this law (NLRB) has been very active the past several years in policing actions and policies of ER's under this Act
  - Ah...those "pesky" posts and tweets....



# FLAVOR OF ENFORCEMENT?!?





# NLRA DECISIONS

## ○ Martin House

- Homeless shelter EE engaged in FB conversation with a friend about mental states of shelter residents
  - EE's actions were not protected b/c she was not discussing with other coworkers

## ○ Souza

- EE criticized her supervisor on FB and traded messages on the topic with other EE's
- ER's policy prohibited EE's from making disparaging remarks about supervisors/company "in any way"
  - ER's policy was overly broad and EE's were allowed to get together on their own time and complain about a supervisor



# NLRA DECISIONS



## ○ Hispanics United of Buffalo

- Social worker polled other EE's on FB about the work quality of another coworker
- Coworkers supported statements and all were terminated for violating company policy regarding harassment and bullying
  - Actions were protected and concerted and did not violate other company policies

## ○ Triple Play

- EE criticized his company on FB for making payroll tax errors that resulted in his owing
- Coworkers “Liked” the post
  - EE's actions were protected and concerted b/c he was attempting to solicit support from coworkers regarding ER's practices
    - Many technical issues involving which posts were “liked”

# NLRA DECISIONS

## ○ Carl Knauz Motors

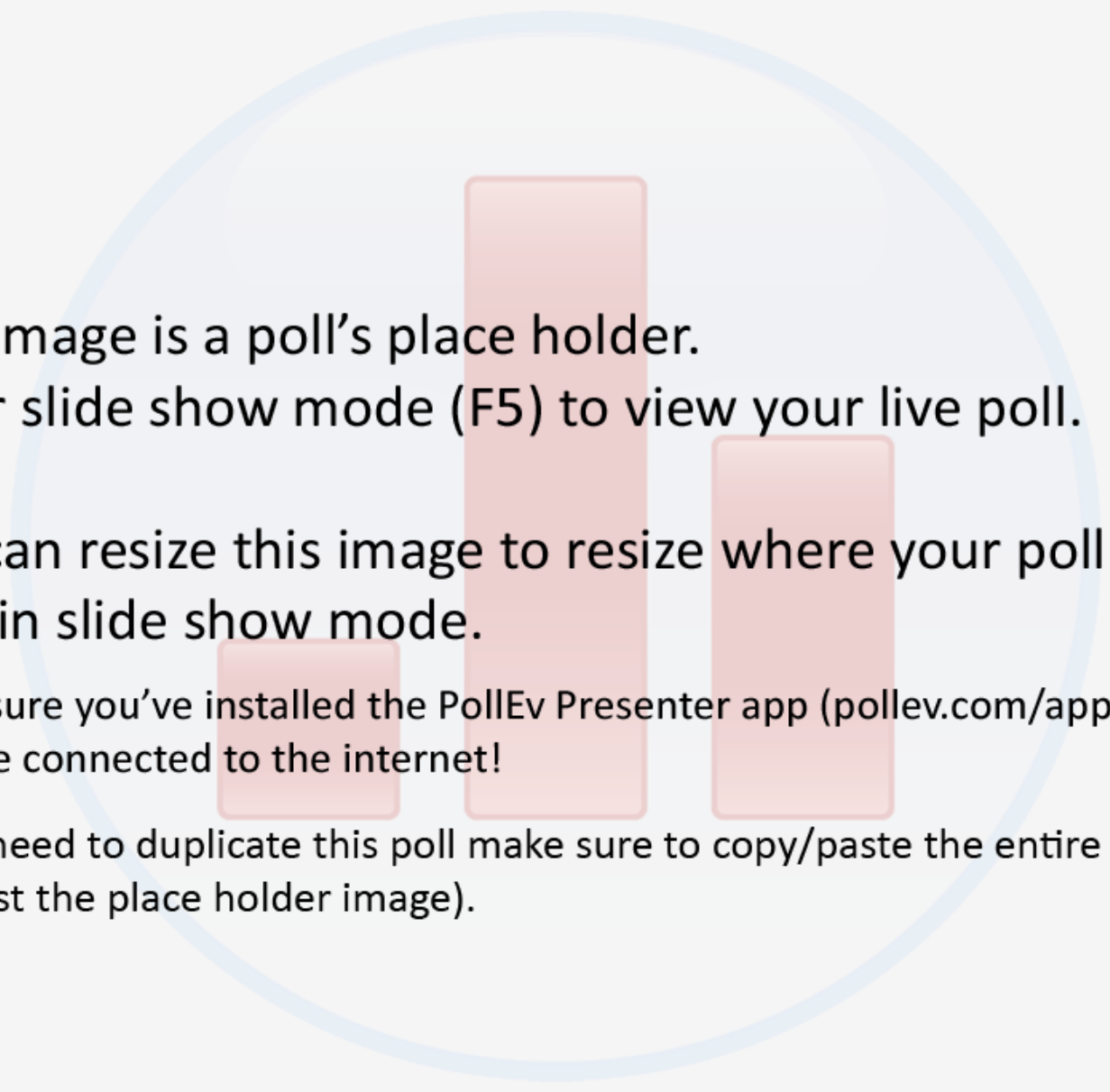
- EE at car dealer made posts on FB about poor quality of food at a dealer marketing event. Also posted comments about a car accident that took place at an nearby dealership
- ER terminated and EE claimed the posts related to the marketing event were protected and concerted and the reason for his termination
  - Complaints about the event might have been protected, but ER was within its rights to terminate over making fun of the other serious accident, which was not protected
  - ER's "Courtesy" policy was found overbroad and had the effect of chilling protected EE speech



# NLRA DECISIONS - TAKEAWAY

- ⦿ Don't automatically terminate an EE for posts, tweets, etc.
  - Thoroughly investigate the situation
    - Determine if any activity was protected and concerted and weigh against any other policy violations
- ⦿ Be prepared for more enforcement and litigation
  - *Social media “has widespread implications” with regard to the NLRA...”A good 10 to 20 percent of our case load has a social media component right now- and that’s just going to increase.”*
    - NLRB Member Harry I. Johnson





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# SOCIAL MEDIA RECRUITING

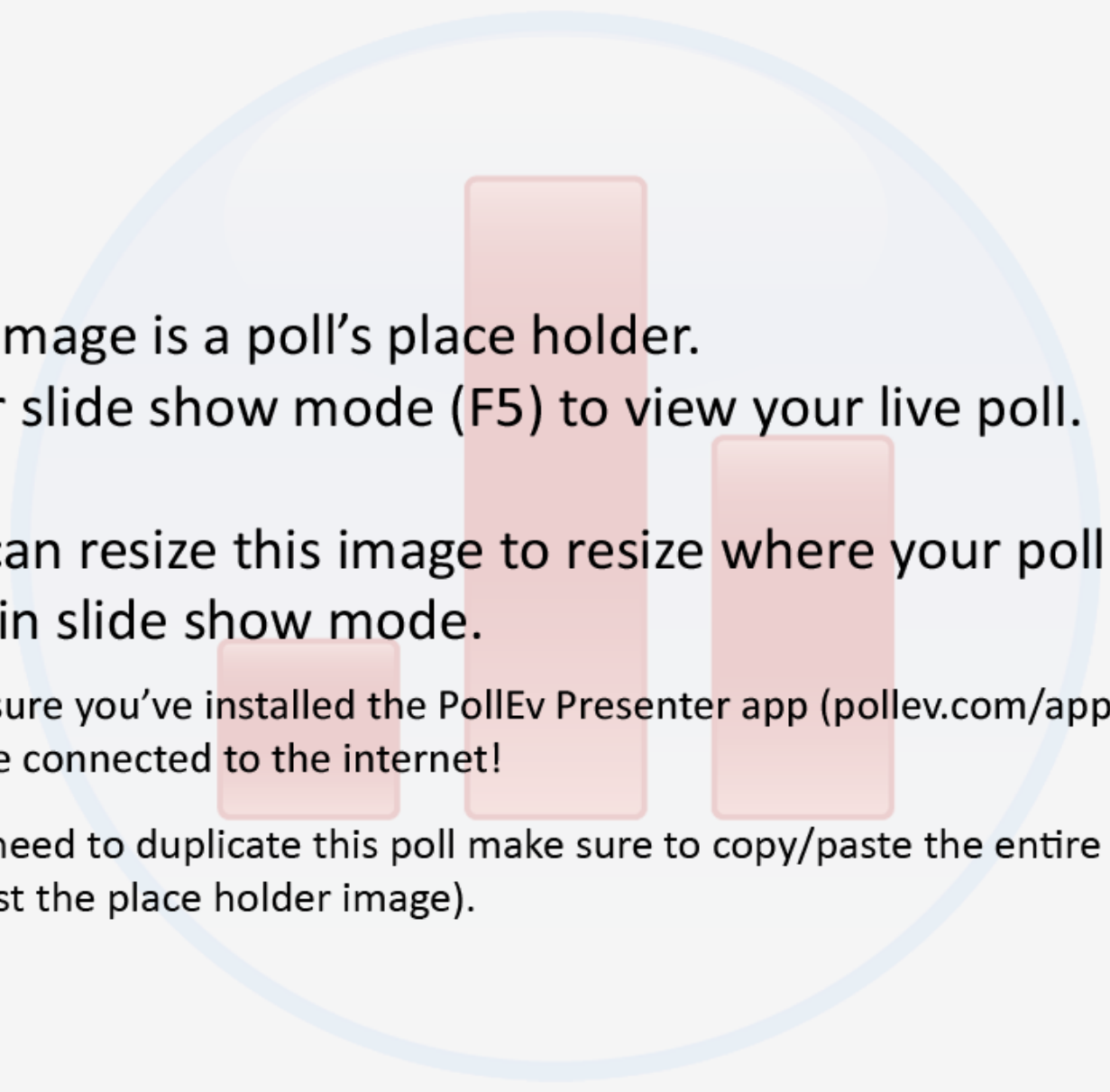




# SOCIAL MEDIA RECRUITING

- 2013 Society for Human Resource Management (SHRM) research showed:
  - 77% of companies using social media to recruit for specific positions
  - Up from 56% in 2011 and 34% in 2008
- Use caution if social media is your only recruiting mechanism
  - EEOC reviewed claims by 61 year old woman that social media recruiting produced an adverse impact on older individuals
    - ER prevailed due to limited evidence, but more cases like this are sure to come





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# SOCIAL MEDIA SCREENING

- 2013 Society for Human Resource Management (SHRM) research showed:
  - 57% of companies do not have a policy related to screening applicants' social networking sites
  - Of those with a policy, 21% prohibit use and 21% allow use
- HR professionals are reticent to use social media for screening purposes for fear of what they may learn
  - 2008 - 54% did not use
  - 2011 - 66% did not use
  - 2013 - 74% did not use



# WHAT YOU MAY LEARN...

- ◉ Protected information about an applicant
  - Age, race, religion, disabled status, etc.
    - How can you prove you didn't discriminate and not hire the person based on this?



# AND WHY YOU SHOULD CARE...

- ◎ *“The increasing use of social media in the 21<sup>st</sup> century workplace presents new opportunities as well as questions and concerns....EEOC understands how social media is being used in the employment context and what impact it may have on the laws we enforce and on our mission to stop and remedy discriminatory practices in the workplace.”*
  - EEOC Chair Jacqueline A. Berrien



# DO NOT HIRE



- ⦿ Types of posts where ER will eliminate an applicant:
  - Job candidate posted provocative or inappropriate photographs or information - 46 percent
  - Job candidate posted information about them drinking or using drugs - 41 percent
  - Job candidates bad-mouthed their previous company or fellow employee - 36 percent
  - Job candidate had poor communication skills - 32 percent
  - Job candidate had discriminatory comments related to race, gender, religion etc. - 28 percent

# DO NOT HIRE

- ⦿ Types of posts where ER will eliminate an applicant:
  - Job candidate lied about qualifications - 25 percent
  - Job candidate shared confidential information from previous employers - 24 percent
  - Job candidate was linked to criminal behavior - 22 percent
  - Job candidate's screen name was unprofessional - 21 percent
  - Job candidate lied about an absence - 13 percent

# SUPERSTAR CANDIDATE



- Types of posts where ER was excited to hire applicant:
  - Got a good feel for the job candidate's personality, could see a good fit within the company culture - 46 percent
  - Job candidate's background information supported their professional qualifications for the job - 45 percent
  - Job candidate's site conveyed a professional image - 43 percent
  - Job candidate was well-rounded, showed a wide range of interests - 40 percent
  - Job candidate had great communication skills - 40 percent



# SUPERSTAR CANDIDATE

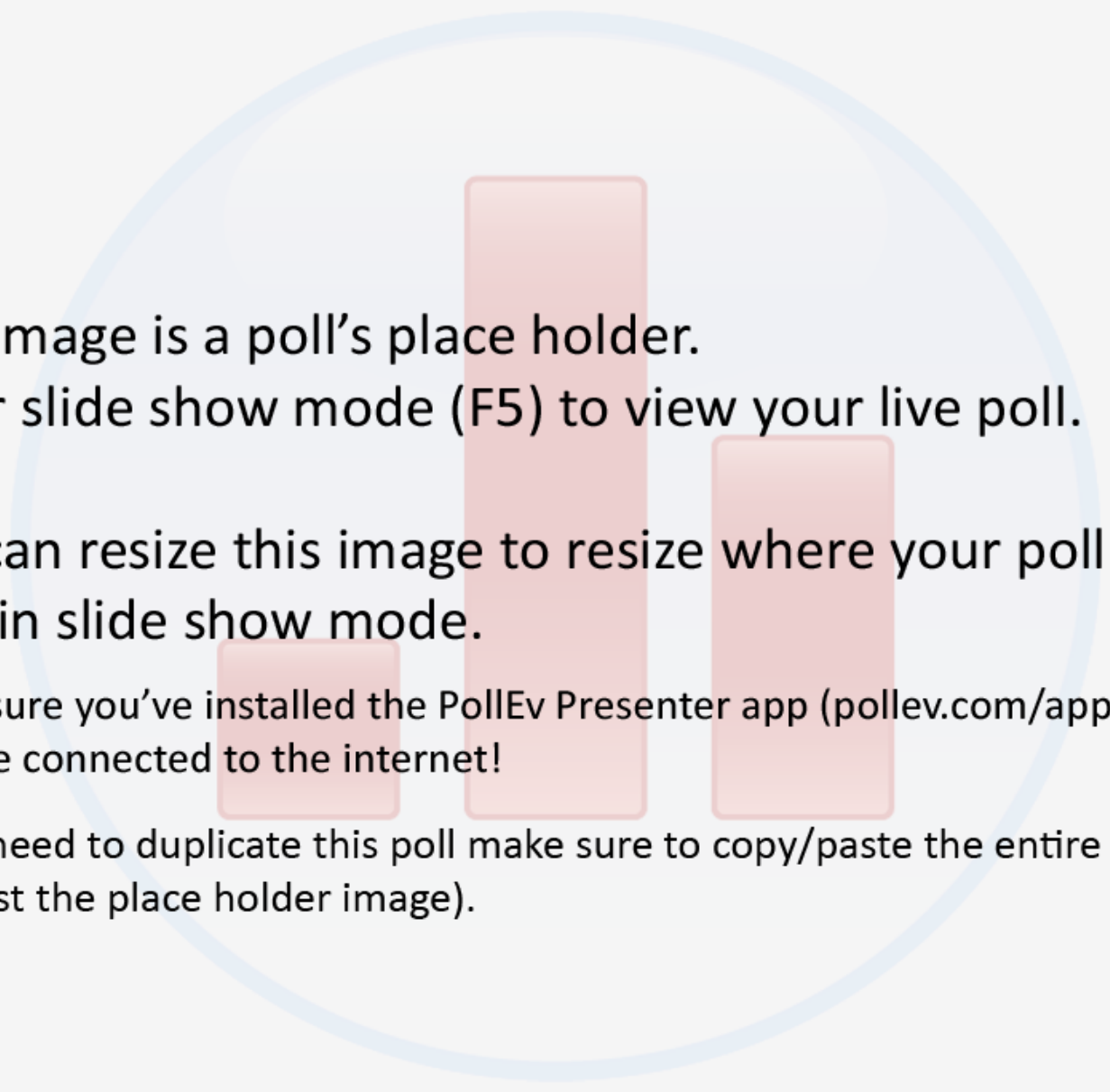
- Types of posts where ER was excited to hire applicant:
  - Job candidate was creative - 36 percent
  - Job candidate received awards and accolades - 31 percent
  - Other people posted great references about the job candidate - 30 percent
  - Job candidate had interacted with my company's social media accounts - 24 percent
  - Job candidate had a large amount of followers or subscribers - 14 percent



# AND WHAT ABOUT???

- ◉ Finding out info about an EE from a coworker who is a social media “friend”
  - e.g. Someone on medical leave is in the Bahamas
- ◉ EE’s creating a ‘hostile work environment’ for coworkers based on their posts
- ◉ Supervisors “friending” their subordinates on social media





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# SOCIAL MEDIA POLICIES

- ◉ Many of the NLRB decisions found ER social media policies to be overly broad and thus infringing on EE's rights under the NLRA
- ◉ Some NLRB decisions are confusing, perhaps even contradictory, and hinge on nuanced factual differences
- ◉ Recruiting and screening policies should also be included to help avoid EEOC claims
- ◉ So what can an ER do???

**Policies**  
**VS**  
**Social Media**



# SOCIAL MEDIA POLICIES

- ⦿ Review the NLRB guidelines
- ⦿ Steer clear of broad, general or vague rules and restrictions
  - These could be interpreted as interfering with EE's NLRA rights
    - e.g. Do not have a blanket restriction on the EE using the company name
- ⦿ Let EE's know if they are being monitored at work
- ⦿ Do not rely on a 'savings clause' and/or disclaimer in your policy
  - NLRB frowns on these and encourages the use of limiting language/specific rules



# SOCIAL MEDIA POLICIES

- Clearly define what is considered “confidential” information under the policy
  - Be sure what you include is not anything that might relate to the terms and conditions of an EE’s employment
    - Some examples of items to include are: Client lists, details about current projects, financial information
- Reference other company policies that should not be violated simply b/c of the use of social media (e.g. harassment)
- Ask EE’s to be clear that while they work for the company, posts are their personal opinion and not that of the company



# SOCIAL MEDIA POLICIES

- ◉ Clearly outline differences in EE personal use and in use of social media on behalf of the company
- ◉ Provide a framework for when and how social media will be used for recruiting and screening applicants
- ◉ Train, train, train
  - Educate supervisors and EE's on the policy





# SOCIAL MEDIA POLICIES - SOUZA CASE



# REFERENCE MATERIALS

- The following sources were used to compile information contained in this presentation:
  - *SHRM.org*
  - *CareerBuilder.com*
  - <http://jobs.aol.com/articles/2011/09/02/facebook-firings-top-ten-cases-and-the-nlrbs-new-guidelines/>
  - <https://www.littler.com/nlrbs-recent-triple-play-decision-tackles-two-critical-social-media-issues-employers>
  - <http://www.thenjemploymentlawfirmblog.com/2013/01/nrb-upholds-termination-of-em.html>
  - <https://www.youtube.com/watch?v=w6rGe-XBj9w>
  - <https://www.youtube.com/watch?v=CFmWLQusZ8E>



# THANK YOU!!!

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