

Hand It Over: Federal Judge Orders Plaintiffs In Discrimination Lawsuit To Produce Cell Phones And Facebook Account Passwords

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Plaintiffs in an employment discrimination lawsuit brought by the Equal Employment Opportunity Commission (“EEOC”) recently were ordered to hand over their cell phones and Facebook account passwords for *in camera* (i.e. private) inspection by a federal Magistrate Judge.

In this case, the EEOC brought suit alleging the defendant employer had subjected a class of female employees to sexual harassment and retaliation. During the course of discovery, the employer moved to compel the production of various text messages and social media posts. According to the Magistrate Judge, there was no question the defendant employer had established this information was potentially discoverable. The defendant had shown, for example, that one of the plaintiffs posted on her Facebook account statements that discussed her financial expectations in the lawsuit, her emotional state, and various other matters related to the ongoing litigation. The fact that this information was generated in cyberspace was irrelevant to the Magistrate Judge’s analysis:

As a general matter, I view this content logically as though each class member had a file folder titled “Everything About Me,” which they have voluntarily shared with others. If there are documents in this folder that contain information that is relevant or may lead to the discovery of admissible evidence relating to this lawsuit, the presumption is that it should be produced. The fact that it exists in cyberspace on an electronic device is a logistical and, perhaps, financial problem, but not a circumstance that removes the information from accessibility by a party opponent in litigation.

From here, the Magistrate Judge will review the electronic data to determine what communications are relevant to the lawsuit and therefore necessary to produce.

The [Discovery Order](#) serves as an important reminder for employers: electronic communications (e.g. text messages and social media posts) often become a focal point during litigation for both parties. While the outcome in this case was favorable for the employer, scandalous text messages or Facebook posts from a supervisor can easily create problems for a business defending against a discrimination/harassment lawsuit.

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