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Illinois Case Reminds (Again): Document Rights And Responsibilities On Company Social Media Accounts

March 10, 2014 | | Social Media And Technology,Labor And Employment

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An Illinois employer faces potential liability for accessing an employee's Facebook and Twitter accounts while the employee was on leave. There is no question the accounts related to the company's business, and among other things directed traffic to the company website.There were various points of disagreement among the parties about the accounts, however, including:

1. The employer says it directed the employee to start the Twitter account in question. The employee denies that.
2. The employee says company management had administrator status on the Facebook page in question, so did not need to log in as the employee. The company says it was unaware of that.
3. The employee maintained a spreadsheet of activity on the accounts and said it was locked to prevent access by anybody else. But a company intern says the employee gave her access to the spreadsheet.

What should be obvious from these points of disagreement is that, in hindsight, all of these matters could have been conclusively addressed in some sort of document between the employer and the employee setting out the ground rules for the accounts. But first, the rest of the story: The employee suffered severe injuries in an auto accident. While she was on leave due to the injuries, it is undisputed that company representatives logged on as the employee, that friend requests on the Facebook account were accepted, and a number of posts were made on the Twitter account. (The parties also disagree as to whether the employee requested that the company stop making such posts.) The employment relationship eventually ended permanently, and the employee filed a lawsuit arising out of the posts, saying they caused severe emotional distress. While the court dismissed some of the lawsuit on summary judgment (read the decision HERE if you want to read the details), but allowed a claim under the Stored Communications Act (SCA) to proceed. The SCA prohibits unauthorized access to electronic communications, and the Court found that were issues of fact as to whether the company's access of the accounts was authorized. This case began in 2010 and has undoubtedly been very expensive to both parties. We cannot fault the employer for not having documented the terms of the social media accounts because it was not customary to do so as recently as 2010, but now we know – social media accounts that blend personal and company purposes can cause expensive disagreements. Employers, if you

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have not taken the time to write down the rules for employee social media accounts relating to your business, 2014 would be a good time to do so.