

Employers May Inadvertently Break The Law When They Discipline Employees For Facebook “Wall” Posts

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A recent case makes clear that employers can violate the federal Stored Communications Act of 1986 (the SCA) when they discipline employees based on the content of nonpublic Facebook “wall” postings – depending on how they obtain the incriminating information.

In *Ehling v. Monmouth-Ocean Hospital Service Corp.*, a case in federal court in New Jersey, the plaintiff was a hospital paramedic who alleged that the her former employer violated the SCA when it fired her for a comment on her Facebook wall. The hospital thought her post reflected “deliberate disregard for patient safety.” (The Plaintiff’s Facebook post happened in June 2009, after a white supremacist shot and killed a guard in the Holocaust Memorial Museum in Washington, D.C. The white supremacist was then shot when other guards returned fire. Following the shooting, the plaintiff suggested on her Facebook wall that the paramedics who treated the white supremacist – and presumably saved his life – should have allowed him to die.)

At the summary judgment stage, the district court explained that – generally speaking – the SCA covers nonpublic Facebook wall” posts because they are *stored electronic communications that are transmitted via an electronic communication service*. In this particular case, however, the hospital learned of the Facebook wall posting from another employee, who voluntarily sent a screenshot of the post to the hospital. Because the friend had access to the Facebook post, (and the hospital did not improperly access it or coerce the coworker) the district court determined that the hospital did not break the law when it fired the Plaintiff. . The Court also tossed out a related invasion-of-privacy claim. “The Plaintiff voluntarily gave information to her Facebook friend, and her Facebook friend voluntarily gave that information to someone else.”

Although the employer in *Ehling* prevailed, the case underscores once again that employers must be careful when it comes to their employees’ use of Facebook and other social media. If the hospital asked the co-worker for a screenshot of the plaintiff’s post – or otherwise pressured the co-worker to provide the information in question – the outcome of the case could very well have been different.

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