BARNES & THORNBURG LLP

Using An Employee's Social Media Posts To Prove Laziness? Think Again

November 21, 2016 | | Employment Lessons,Fair Labor Standards Act,Labor And Employment

Is it permissible for an employer who is subject to an unpaid overtime claim to request an employee's social media postings over a three-year period? The U.S. District Court for the Middle District of Florida found such requests to be overly broad, unduly burdensome and unreasonable. A sales representative sued her employer for uncompensated off-the-clock work. During discovery, the employer, Orange Lake Country Club, requested the following information from the employee: All online profiles, postings, messages (including, without limitation, tweets, replies, retweets, direct messages, status updates, wall comments, groups joined, activity streams, and blog entries), photographs, videos, and online communications that you posted on any date between June 19, 2011 and your last day of employment with Orange Lake.

Any and all information contained in your Facebook, MySpace, Instagram, LinkedIn or other social networking account that you posted at any time between 7:00 am and 7:00 pm on any date between June 19, 2011 and your last day of employment with Orange Lake.

The employer argued that the information sought was relevant and critical to the claims asserted because the employee alleged that she worked 15-20 hours of overtime but did not have documentation accurately reflecting hours worked. The employer claimed the information was relevant to show *when* the employee engaged in non-work related activity and not merely to show that the employee engaged in social media activity during work hours. As a last ditch-attempt to obtain the information, the employer argued that its requests were not overbroad because they only sought social media content posted within the three-year FLSA statute of limitations period and only for the hours the employee typically worked for the employer. The court didn't buy it and found the requests to be overly broad, unduly burdensome and unreasonable. In fact, the employee had already provided certain overtime calculations that showed the relief sought covered only the days in which the employee clocked in and out during a workday. The court, of course, did not find that the types of requests at issue were per se inappropriate; it did make clear, however, that such requests must be narrowly tailored to the needs of the controversy, given the inordinate amount of information contained on social media pages. Read the full opinion here.

RELATED PRACTICE AREAS

Labor and Employment
Management and Employee Training
Wage and Hour
Workplace Counseling
Workplace Culture 2.0

RELATED TOPICS

Fair Labor Standards Act (FLSA)
Overtime
Social Media