

We Represent California

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Facebook has over 500 million active users.

Twitter users are recording an average of 55 million tweets a day.

If an employee files suit against your client, what are the odds the employee uses social media? I'd say they're pretty good. Just imagine missing the Facebook post:

"I'll do whatever it takes to get back at my employer."

WHAT IF THE PLAINTIFF RESTRICTS FACEBOOK ACCESS?

Recently, in EEOC v. Simply Storage Management, a federal court permitted an employer to obtain discovery of an employee's social networking activity that, through privacy settings, the employee had made "private" and not available to the general public.

So, as part of discovery, an employer should consider requesting:

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:

1. refer or relate to the allegations set forth in the complaint;
2. refer or relate to any facts or defenses raised in the answer;
3. reveal, refer or relate to any emotion, feeling, or mental state; or
4. reveal, refer, or relate to events that could reasonably be expected to produce a significant emotion, feeling, or mental state.

If the responding employee no longer has access to responsive information, then go right to the source with a subpoena.

If all else fails and you know that the plaintiff-employee is a Facebook user who has published online content relevant to the litigation, then you may have a good spoliation argument. Recently, Judge Shira A. Scheindlin of the Southern District of New York sanctioned 13 plaintiffs who failed to act diligently and search thoroughly at the time they reasonably anticipated litigation. According to Scheindlin, a recognized leader in e-discovery jurisprudence, writing in Pension Comm. of Univ. of Montreal Pension Plan v. Bank of Am. Secs., LLC.

It's 2010 and the way we communicate has changed dramatically.

For more information go to: From *Law Technology News*: "How Facebook Can Make or Break Your Case," by Eric B. Meyer--

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