

## Facebook Friends & Workplace Enemies



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Inappropriate Facebook posts, pictures and the like have led to many firings in recent years. A large number of employees have become smarter on social media and made a concerted effort to not “friend” a manager or boss. They think that they are keeping their online persona and work reputation separate...but is that really possible when dealing with the Internet?

It is not uncommon for an employer to be completely oblivious to an employee’s inappropriate online actions until presented with the evidence from a Facebook “friend” and coworker of the subject employee. If the employer chooses to take adverse employment action against the subject employee, the coworker’s evidence can be crucial in defending against a discrimination lawsuit.

Nonetheless, employers should think twice before they solicit coworkers to disclose the postings of another employee because of the **Federal Stored Communications Act (“SCA”)**. The SCA prohibits intentionally accessing without authorization a facility through which an electronic communication service is provided or intentionally exceeding an authorization to access that facility. 18 U.S.C. §2701(a).

In ***Ehling v. Monmouth-Ocean Hospital Service Corp.***, No. 2:11-cv-3305 (WMJ) (D.N.J. Aug. 20, 2013), a New Jersey federal court held that an employee’s Facebook wall posts were protected by the SCA.

Deborah Ehling (the plaintiff) was a registered nurse and paramedic. She had a

Facebook account with approximately 300 friends, but was careful to not add any hospital managers or supervisors as friends and maintained her privacy settings so that only friends could see posts.

In 2009, Ehling made a statement on her Facebook wall criticizing emergency response paramedics at a shooting at the Holocaust Museum in Washington, D.C., who reportedly saved the life of the shooter. It read:

An 88yr old sociopath white supremacist opened fire in the Wash D.C. Holocaust Museum this morning and killed an innocent guard (leaving children). Other guards opened fire. The 88 yr old was shot. He survived. I blame the DC paramedics. I want to say 2 things to the DC medics. 1. WHAT WERE YOU THINKING? And 2. This was your opportunity to really make a difference! WTF!!!! And to the other guards...go to target practice.

A coworker and Facebook friend of Ehling's printed a screenshot of this post and emailed it to Ehling's manager. It is important to note that the friend was not prompted by the manager for any information about Ehling or to be apprised of any of her online activity. It was simply something the "friend" chose to do on his own.

Ehling was subsequently suspended and received a memo from the hospital explaining that such action was taken because her Facebook comment reflected a "deliberate disregard for patient safety." The memo prompted Ehling to file a complaint with the National Labor Relations Board. It was found that the hospital was not in violation of the National Labor Relations Act. She then filed suit in federal court, alleging the hospital had violated her rights under the SCA.

To learn about the outcome of this case, [check back for Part 2 - click here.](#)

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