

## Court Rules Employee Can Proceed with ADA Confidentiality Breach Claim Based on Facebook Posting

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An Indiana court denied an employer's motion to dismiss the complaint of an employee who alleged the employer violated the Americans with Disabilities Act ("ADA") when a co-worker disclosed his medical condition on Facebook. The employee injured his shoulder on the job and took several months off of work to recover. A co-worker who was responsible for processing the employer's worker's compensation claims made a post on Facebook referencing the employee, stating "Isn't [it] amazing how Jimmy experienced a 5 way heart bypass just one month ago and is back to work, especially when you consider George Shoun's shoulder injury kept him away from work for 11 months and now he is trying to sue us." Shoun claimed that the Facebook page linked to the co-worker's business email address and was available to business communities in two states, and that the post caused him emotional injury and led prospective employers to refuse to hire him. He alleged that his co-worker and employer were obligated to treat medical information obtained during employment-related medical examinations and inquiries as confidential under the ADA. The employer moved to dismiss the complaint, arguing that Shoun voluntarily disclosed his medical condition when he filed an earlier state court action against the employer. The judge denied the motion to dismiss, noting that it was not clear whether the co-worker learned about Shoun's injury from another source besides his worker's compensation medical examinations.

**TIP: Employers should ensure that medical information related to employees is kept strictly confidential and that all employees who have access to such information are aware of the restrictions governing the disclosure of the information.**

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