

## Manager Violated the Stored Communication Act By Using a Fake Facebook Account to See an Employee's Posts

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In an arbitration decision released recently, an arbitrator found that a U.S. Border Patrol manager violated the Stored Communications Act (SCA) when he created a fake account on Facebook in order to view the posts of an employee. Based in part on the posts, the employee was charged with "Poor Judgment" and terminated for cause. The arbitrator held that the SCA applies to Facebook posts when users enable the privacy settings, which the employee did. The arbitrator found that none of the three defenses enumerated in the SCA applied to the employer, as the manager was not conducting a criminal investigation, did not fear for anyone's safety and the employer was not a stored communications provider. Because the Facebook posts were gathered in violation of the SCA, the arbitrator determined that they could not be used to show cause supporting the employee's termination. The arbitrator found that the employee should have been subject to a ten-day suspension rather than termination.

**TIP: Employers that attempt to circumvent privacy settings on employees' personal social media accounts may find themselves accused of Stored Communications Act violations, as well as exposing themselves to potential negative publicity.**

*This tip has been created for information and planning purposes. They are not intended to be, nor should they be substituted for, legal advice, which turns on specific facts.*

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