

Employer Did Not Violate the Stored Communications Act When Employee's Facebook Posts Showed to Manager by Co-Worker

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A New Jersey judge recently ruled that Monmouth-Ocean Hospital Service Corp. did not violate the Stored Communications Act when it disciplined an employee, Deborah Ehling, for posting a statement on Facebook criticizing paramedics for saving the life of someone who opened fire at the Washington, D.C. Holocaust Museum. Although Ehling enabled Facebook's privacy settings and did not "friend" any of her supervisors, she did friend co-workers, one of whom took screenshots of her Facebook page and printed them/emailed them to a manager. Monmouth-Ocean temporarily suspended Ehling after learning of the post, concerned that it showed a "deliberate disregard for patient safety." Ehling claimed that Monmouth-Ocean violated the SCA by improperly accessing her Facebook wall, as her posts were private. The judge found that the SCA applies to non-public electronic communications that are transmitted and stored electronically. Because Ehling enabled the privacy settings on Facebook and her posts were not available to the public, the judge found that the posts were covered by the SCA. However, the judge noted that the SCA includes an "authorized user" exception, where conduct authorized by the person providing a communication or by an intended user does not violate the SCA. Here, Ehling's co-worker was authorized to access her Facebook wall, as Ehling added him as a "friend." Additionally, his use of her Facebook post was authorized because the judge found that he was not coerced by Monmouth-Ocean management to share the posts. Finally, Ehling's Facebook post was intended to be viewed by her Facebook friends. The judge found that the authorized user exception to the SCA applied and granted summary judgment on the SCA claim to Monmouth-Ocean. The judge also granted summary judgment to Monmouth-Ocean on Ehling's invasion of privacy claim, finding that Ehling voluntarily gave information to her Facebook friend, who voluntarily shared it with a manager, and that there was no intentional intrusion on Ehling's privacy.

TIP: This case, like others we have recently reported on, is a reminder that employers should be aware that the SCA applies to private Facebook posts. Therefore, unauthorized access of employees' private Facebook posts may violate the SCA. However, where an individual voluntarily shares information from his or her own page or the page of a co-worker to which they have authorized access, the SCA may not apply.

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