



The Brown & Carlson, P.A. Insight

Tips for Using Social Media to Defend Against a Workers' Compensation Claim

As more people turn to social networking sites to interact and communicate with one another, social media evidence will undoubtedly become a common component of litigation. While not an exhaustive list, the following tips may be useful to you in using social media to defend against suspicious workers' compensation claims:

- Conduct a Google search or search other popular social media networking sites for the claimant, including Facebook, LinkedIn, and MySpace (also known as "My___").
- If you are able to uncover information about the claimant on a social networking site, print out everything you find, screenshot by screenshot. This helps guard against the claimant subsequently destroying the evidence and denying it ever existed. If the matter enters litigation, the printout will also likely be necessary to authenticate the social media evidence. Your testimony, as the person who obtained the social media evidence, will also be helpful.
 - If you determine to make contact with the claimant on a social networking site, it is important that you do not misrepresent yourself, such as pretending to be someone else when asking the claimant to be your "friend." Evidence obtained in this manner will likely not be admissible in court.
- To obtain more evidence than what is available on the claimant's "public" profile(s), you may want to consider requesting that additional or "private" information through the discovery process, including depositions, recorded statements, or demands for discovery. However, whether and the extent to which you should reveal to the claimant the information you uncovered on the social media networking site will vary by case as this could impact your defense strategy. If you determine to proceed, the goal should be to obtain additional facts or information necessary to link the message or posting to that person.
 - If taking the claimant's recorded statement or deposition, the claimant should likely be asked: if he/she created the profile, username, screen name, and password; if anyone else has access to his/her profile or knows his/her password; if it is his/her picture, personal information, and username on the profile (or was at the particular point in time when you viewed it) and, more specifically, if he/she is the author of a particular message or posting at issue; and what computer(s) or device(s) he/she uses to access the social networking site;
 - If serving a demand for discovery, you may want to ask the claimant to provide: identification of all forms of social media utilized by the claimant, together with all information required to allow you to access this social media and his/her profile, including, but not limited to, user names, screen names and passwords.

Obviously, claimants' attorneys may refuse to allow claimants to provide some or all of the above information. Because social media is such a new domain of evidence, it largely remains to be seen how compensation judges will address these issues.

Should you have any questions regarding the above information or have questions about the rationale behind the above tips, please contact Brown & Carlson, P.A.

Autumn K. Capelle
Brown & Carlson, P.A.
5411 Circle Down Avenue, Suite 100
Minneapolis, MN 55416-1311
763.591.9950
www.browncarlson.com