

OCTOBER 9, 2012

Discover Social Media: It Has Email, Too

A recent decision from the District of Oregon provides another example of a court allowing broad discovery of social media, particularly when the emotional state of a party is at issue. In the racial discrimination case *Robinson v. Jones Lang LaSalle Americas, Inc.*,¹ the defendant requested that the plaintiff produce all emails, text messages, and social media content related to her “emotion, feeling, or mental state” (in addition to content related to her claim)² The court granted the request, allowing discovery of content that did not reference the plaintiff’s claim, yet related to “events or communications that could reasonably be expected to produce a significant emotion . . . allegedly caused by defendant’s conduct.”³

When discussing the discoverability of social media content, the court highlighted the reasoning set forth in *EEOC v. Simply Storage Management, LLC*,⁴ another case involving emotional distress. The court adopted the concept that:

It is reasonable to expect severe emotional or mental injury to manifest itself in some [social media] content, and an examination of that content might reveal whether onset occurred, when, and the degree of distress. Further, information that evidences other stressors that could have produced the alleged emotional distress is also relevant.⁵

The court further admitted that “it is impossible for the court to define the limits of discovery in such cases with enough precision to satisfy the litigant who is called upon to make a responsive production” and deferred to the good faith of counsel to make the determination.⁶

Perhaps the most interesting facet of this order lies in the disparity between the court’s treatment of the discoverability of social media content and email/text messages. The court purports to “see no principled reason to articulate different standards for the discoverability of communications through” the various platforms.⁷ But the court distinguishes between what is discoverable in email/text format and what is discoverable in social media format. Communications via the more traditional email and text must have occurred with current or former employees.⁸ Discoverable communications passing through social media, however, are not limited by any relationship between the sender and recipient(s).

Discoverable social media communications include “messages,”⁹ which are essentially emails and text messages that are incorporated into the social media platform. Individuals send messages to each other; the communications are not automatically posted to a profile for the rest of the user’s connections to view. The language of the order may have unintended consequences, especially should the popularity of Facebook messaging continue to grow or if Gmail is viewed as an extension of the Google+ Social Networking platform.



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¹ Robinson v. Jones Lang LaSalle Americas, Inc., 3:12-cv-00127-PK (D. Ore. Aug. 29, 2012).

² Robinson, slip op. at 2.

³ Id. at 4.

⁴ EEOC v. Simply Storage Mgmt. LLC, 270 F.R.D. 430 (S.D. Ind. 2010).

⁵ Robinson, slip op. at 3 (citing *Simply Storage*, slip op. at 435).

⁶ Id. at 5.

⁷ Id. at 3.

⁸ Id. at 4.

⁹ Id.

