

NEW JERSEY

APPELLATE DIVISION CLEARS WAY FOR DEFENDANTS TO OBTAIN SOCIAL MEDIA DISCOVERY AND CALL RECORDS FROM PLAINTIFFS

Schenck Price

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Defendants in New Jersey are now able to capitalize on plaintiffs' errant social media posts and text messages. In *Norma Davis v. Disability Rights New Jersey, et al.* the New Jersey Appellate Division defined the scope of defendants' discovery rights to include plaintiffs' social media posts and phone records which relate to the underlying claims or damages. This finding expands defendants' discovery repertoire and permits further investigation into the veracity of plaintiff's claims.

In *Davis* plaintiff brought an employment discrimination claim against her former employer and supervisors. During the course of discovery, plaintiff filed a motion to quash a subpoena for her cell phone records and social media posts. Defendants argued this content was relevant to her claimed damages and to her personal cell phone usage at work, which had been a factor in her termination.

On Appeal, the Appellate Division sided with defendants holding that while plaintiff had a privacy interest in her private social media posts, plaintiff's private social media posts were not off limits from defendants' discovery requests as private social media content is not privileged or otherwise specially protected from disclosure. Rather discovery of all relevant, non-privileged information is permitted under New Jersey rules. The Appellate Division further found that the same liberal discovery rules applied to cell phone records as to the social media posts, with the one exception pertaining to cell phone billing records which were outside the scope of discovery.

Davis signifies the end of individual plaintiffs in New Jersey being able to frustrate defendant employer's legitimate and necessary requests for relevant social media posts and cell phone records by raising vague claims of "privacy." Accordingly, adept defense counsel who are aware of this holding and who are cognizant of the fact-finding potential of social media posts and cell phone records will be able to obtain further relevant and potentially critical information through carefully crafted discovery requests.

Based on the scope of damages available to a plaintiff in an employment discrimination claim, pursuing thorough and complete discovery is critical to the defense of a claim. The attorneys at Schenck Price stand ready to work with defendants engaged in litigation to ensure their rights are properly defended by employing all available discovery tools, tactics and procedures.

For more information, contact Matthew R. Parker at mrp@spsk.com or 973-540-8227, and Erica G. Litvak at egl@spsk.com or 973-631-7845.

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