

EEOC (Equal Employment Opportunity Commission) Meeting: Social Media Discovery Chills The Exercising of Rights

Article By:

Jason C. Gavejian

The **United States Equal Employment Opportunity Commission** (EEOC) recently [held a meeting](#) to gather information about the growing use of **social media** and how it impacts the laws the EEOC enforces.

During the meeting, a panel representative from the **Society for Human Resource Management** (SHRM) explained that employers use different types of social media for various reasons, including: employee engagement and knowledge-sharing; marketing to clients and potential customers; crisis management; and recruitment and hiring.

Others noted that while social media has benefits and can be a valuable tool, the improper use of information obtained from such sites may be discriminatory since most individuals' race, gender, age, disability, and possibly ethnicity can be discerned from information on social media sites. This is especially important in states which have prohibited employers from requesting access to employees' or potential employees' social media accounts.

Perhaps the most telling area discussed during the meeting was the increased use of social media as a source of discovery in employment discrimination litigation. While there appears to be no dispute that public social media content is accessible by all, a Senior Trial Attorney in the EEOC's Denver Field Office warned that the increased effort to access potentially aggrieved persons *private* social media communications may have a chilling effect on persons seeking to exercise their rights under federal anti-discrimination laws.

The EEOC has often taken the position that social media content is not relevant, while many employers have utilized social media to gain valuable discovery, especially with regard to emotional distress damages. The EEOC's position is now being mirrored at the state level where plaintiffs assert that their social media content is not relevant. However, defendants (often employers) have benefited from obtaining social media content to dispute a plaintiff's claims, especially when the defendant is able to demonstrate the relevant nature of social media content to the litigation.

Social media, and especially the discovery of same, is one of the most important and ever evolving areas of employment law. Litigants, and employers must be prepared for the nuances associated with social media and the current standing of the law in the local jurisdiction.

National Law Review, Volume IV, Number 97

Source URL: <https://natlawreview.com/article/eeoc-equal-employment-opportunity-commission-meeting-social-media-discovery-chills-e>