



DELAWARE

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ELECTRONIC WORKPLACE

Court considers who owns LinkedIn account—employer or employee?

by Molly M. DiBianca

Ownership of employees' social media accounts is an issue of growing concern. When an employee is encouraged to set up a LinkedIn account, who owns the account when the employee leaves her employment or is fired? The U.S. District Court for the Eastern District of Pennsylvania recently was presented with that question and allowed the case to go to trial on at least some of the employee's claims.

Facts

Dr. Linda Eagle cofounded EdComm, Inc., in 1987. The company was purchased in 2010, and Eagle was terminated soon after. Before the purchase, EdComm's CEO encouraged all EdComm employees to create a profile on LinkedIn listing EdComm as their current employer. Eagle, with the help of a designated EdComm employee, followed the suggestion and set up a LinkedIn profile. The company had a policy that required employees to (1) use their company e-mail address in their LinkedIn profile and (2) set up their profile using a company-created template. Once an account was created, EdComm kept a copy of the account's password on file.

What's mine is mine, and what's yours is mine

It was the company's general policy that when an employee separated from EdComm, the company effectively "owned" the LinkedIn account and could "mine" the information and incoming traffic so long as doing so didn't result in stealing the former employee's identity.

The same day Eagle was fired, she attempted to log into her LinkedIn account but was unable to do so. The next day, the company announced its new executive management team, including Eagle's replacement. Using Eagle's password, EdComm accessed her account and changed the password, thereby precluding her from future access. It also changed the account profile to display the successor's name and photograph. However, Eagle's honors, awards, recommendations, and connections remained unchanged.

Eagle filed suit, asserting a violation of the Lanham Act and the Computer Fraud and Abuse Act (CFAA) as well as state common-law claims, including conversion (i.e., theft). The court dismissed her federal statutory claims under the Lanham Act, in large part because she was unrepresented by counsel and her arguments were weak. The court did, however, allow her state-law claims to proceed to trial. A full trial on the merits of those claims was scheduled for October 16. *Eagle v. Morgan*, No. 11-4303 (E.D. Pa., Oct. 4, 2012).

Bottom line

So what's the real lesson to be learned from this case? Employers that encourage (or require) employees to create or use a social media account for work should clearly establish—at the outset and in writing—who owns the account. In this case, doing so would have saved EdComm the angst and expense of defending a lawsuit on the issue.

For more information on this issue, see "Arm yourself: Battle over social media account ownership has begun" on pg. 4 of our October issue.

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