



# Social media in the Workers' Comp claim

## Oversharing on social media may lead to undesired exposure and correspondingly undesirable results

BY ANDRE SMITH

The allure and influence of social media is undeniable. Websites and applications have become the sounding boards of society, wherein people offer opinions, share memories, promote levity, and create windows into their personal lives. In the realm of workers' compensation litigation, this inclination to reveal one's personal activities is often used by litigants to either attack claims of opposing parties or strengthen one's own position.

An initial stage of a workers' compensation claim is characterized by the establishment or denial of compensability; identifying whether the claimed injury is in fact industrial. Defense attorneys can use social media postings to unveil or assert fraudulence on the part of the injured worker, or to challenge the degree to which a person is actually injured (nature and extent).

Where a civil case is also a third-party case aligned with a workers' compensation claim, the defense in the civil case can take advantage of evidence gathered

in the workers' compensation case, absent the civil plaintiff's knowledge. Civil-defense attorneys can and will use this workers' compensation case evidence at more opportune moments in the civil case, often catching a plaintiff, plaintiff's witnesses, and expert witnesses off guard.

Ultimately though, it's important to recognize the absence of privacy associated with posting one's own social media. In the context of workers' compensation and civil litigation, this lack of privacy, and in many senses, oversharing, may lead to undesired exposure and correspondingly undesirable results.

### **Intersection of workers' compensation claims with personal injury cases**

Where a workers' compensation claim involves an injury caused by a third party, the injured worker may have a cause of action against that third party. The Workers' Compensation Appeals Board would not have jurisdiction over this civil case, which instead would be held in California Superior Court.

It is important to note that "California Superior Courts are increasingly enforcing social media production requests in personal injury claims." (California Court Compels Plaintiff to Produce Social Media Evidence in *Guzman v. Dial Transp. Inc., Private Footprint, Client Social Media Discovery for Plaintiff Attorneys*, April 11, 2025, <https://privatefootprint.com/california/guzman-v-dial-transp-inc/>).

In *Guzman v. Dial Transp. Inc.*, a personal injury claim pertaining to a motor vehicle accident, the defendant in the case filed a motion to compel Mr. Guzman to produce his social media posts "and other related documents that could provide insights into the plaintiff's injuries and activities," following Mr. Guzman's refusal to do so. The court ruled in favor of the motion to compel, ordering Mr. Guzman to provide all requested social media evidence. The court commented that Mr. Guzman did not produce a valid reason for his noncompliance and emphasized "the growing importance of digital discovery



and personal injury cases.” (Private Footprint, *supra*.)

Not all social media may be admitted as evidence. The minimal standard for admissibility is relevance. Social media may be relevant when used to challenge the credibility of a witness under Evidence Code section 210. Social media can also be relevant in that it has a tendency to prove or disprove a disputed fact that is of consequence to the decision-making of the case, under Evidence Code section 350.

In a vast majority of workers’ compensation cases, the evidence gathered during discovery does not reach the workers’ compensation judge. Most of these cases settle before trial. Thus, the defense usually does not have to contend with whether social media evidence is admissible at trial. Instead, while needing to maintain the minimal standard of relevance, the defense will usually use the material by presenting it to a medical-legal evaluator to influence the evaluator’s opinion relative to an injured worker’s capabilities, and/or credibility.

However, in civil court, particularly when a civil case is aligned with a workers’ compensation case, beware the defense’s ability to obtain social media evidence through social media searches of a workers’ compensation investigator, and withhold such evidence in the civil case rather than providing it during discovery. The defense could then wait until the very last minute to introduce the evidence, and/or use it as impeachment evidence at trial.

Defense attorneys will use such tactics to undermine the testimony of an expert witness, a lay witness, and/or the plaintiff.

### **Compensability in workers’ compensation**

Social media can be used to prove or disprove whether a workers’ compensation claim arises out of and is in the course of employment (AOE/COE). In

the case of *Barbani v. City of Beverly Hills*, 2018 Cal. Wrk. Comp. P.D. LEXIS 448, the court addressed whether the claimant had a reasonable expectation of employment pertaining to participation in a dodgeball event leading to injury, thus making his injury compensable, under Labor Code section 3600, subdivision (a)(9).

In *Barbani*, the claimant received several emails at a work email addressed from the police sergeant requesting he represent the department at the extracurricular event. No emails suggested that his participation was voluntary. The applicant participated in practices for the game while on duty and was paid for participation in those practices. Additionally, the practices took place at City Hall. The court further noted that the police sergeant attended the event, took pictures, and posted them on both her personal Twitter account and the Beverly Hills Police Department Twitter account.

Evidence including social media postings supported a direct link between applicant’s employment and the extracurricular event and reinforced that the applicant’s participation was expressly or impliedly required by the employment.

On appeal, the Workers’ Compensation Appeals Board thus upheld the workers’ compensation judge’s ruling of compensability.

While the case above is an example of compensability being substantiated, social media is more frequently used by the defendant to show the applicant sustained his/her alleged injury in a nonindustrial fashion, or in fact did not sustain injury as alleged.

Where compensability is in question, defense attorneys routinely use investigators to conduct social media searches. These online database searches coalesce information and postings from various platforms. The investigators are able to find whatever the injured worker, family, friends, and social media community have shared. Defense attorneys most

frequently then question the injured worker at deposition concerning the information gathered, and/or provide the social media search information (videos, pictures, comments, etc.) to the applicable medical-legal evaluator along with an inquiry regarding whether the claimant is in fact injured, and if so the degree to which he/he is injured given the activity evinced.

Similarly, in civil cases a defense attorney will use an investigator to conduct a social media search and collect surveillance footage of the plaintiff for the purpose of discrediting the plaintiff’s position by evidencing social and physical abilities that are counter to the plaintiff’s claims.

### **Accusation of fraud**

It is important to recognize that workers’ compensation defense entities (insurers, third-party administrators, self-insured employers, etc.) operate as insurance companies, seeking to mitigate costs at every turn. Insurance companies are fervently working to protect themselves against fraud. Courts are validating social media as an effective evidentiary tool. It has thus become common practice to use social media to evince fraud, both in workers’ compensation and personal injury cases.

In one such example, a motorcycle mechanic who worked in San Bernardino alleged injury to his arm and right shoulder, suffered while at work. Unfortunately for him, coworkers saw photos on multiple social media platforms that displayed his active lifestyle including downhill mountain biking, and motorcycle racing, both of which involved the use of his arms and shoulders.

An investigation ensued, which included the amassing of surveillance video and conducting a social media search. Ultimately the medical-legal evaluator in this person’s case deemed him to have been dishonest in his presentation of his injuries. This claimant was correspondingly arrested and



prosecuted for his fraudulent activity. (California Department of Insurance, Surveillance and social media posts lead to felony arraignment of San Bernardino mechanic accused of workers' compensation fraud, California Department of Insurance website, August 24, 2022, <https://www.insurance.ca.gov/0400-news/0100-press-releases/2022/release057-2022.cfm>)

It is important to always maintain integrity in the filing of a workers' compensation and/or civil claim. It is also important for plaintiff/applicant to be aware of how he or she is perceived. Posting of personal behaviors on social media allows for varied public perception, which can and likely will be seized upon by the insurer. An applicant who has claimed injury to his knee and subsequently posts pictures on Instagram of himself and his dog at a park, provides the opposing party with evidence supporting the assertion that his knee is not as bad as he implies, or perhaps not injured at all. Even in the midst of suffering from an industrial injury, the mere posting of an image that seemingly defies the restrictions imposed on a person by his or her primary treating physician or medical-legal evaluator; can be used to assert fraudulence on the part of the injured worker.

In addition to maintaining one's integrity and honesty in the filing of a claim, the best protection against an assertion of fraud is to avoid posting on social media during the period in which the claim or workers' compensation case is open.

### **Nature and extent of injury**

Regarding workers' compensation cases, defenses use social media where the injury claim itself has already been admitted. Compensability and/or fraudulence are not at issue. In this scenario the defense tries to convince a medical-legal evaluator, or judge, that the applicant is not as impaired as asserted. There is a direct financial consequence to

the applicant that results when this defense is successful.

In computing probable earnings, per Labor Code section 4657, consideration must be given to the nature and extent of the injury and the ability of the injured employee to compete in an open labor market. Under section 4657 the law further indicates that if evidence of exact loss of earnings is lacking, "the *weekly loss in wages may be computed from the proportionate loss of physical ability or earning power caused by the injury.*" (Sullivan on Comp, 9.7 Compensation Rate for Partial Temporary Disability-Wage Loss)

A defendant can use evidence of physical ability as a factor in computing an injured worker's probable earnings, and corresponding loss of earnings.

Where an injury is admitted, or has been deemed compensable by the court, the defendant may still challenge the degree to which the applicant is injured. Social media can be a powerful tool in establishing a person's physical capability. An abundance of information may be gathered when the injured worker posts social events, family events, along with the dates, times, and locations of activities engaged in.

Additionally, the defendant will use an injured worker's postings to influence a medical-legal evaluator's opinion of impairment caused by the injury. Of course, this opinion directly impacts compensation that the injured worker will receive as a result of permanent disability. Postings showing participation in physical activities can suggest an increase in physical capability, and ability to perform activities of daily living, as well as job-related duties, thus undercutting the claimant's argument in favor of lost earnings.

In the case of psych/PTSD claims, social media postings showing either joyous activity, or engagement in work-related activities or work-like activities, can inform a medical-legal opinion of lessened impairment.

The civil-defense attorney will similarly use social media postings to suggest that a plaintiff's claims of injury are hyperbolic. On cross-examination, a defense attorney may introduce such evidence as impeachment in questioning the plaintiff. It thus becomes useful to work with a workers' compensation attorney to prepare your client and witnesses for deposition. Additionally, if plaintiff's counsel has aligned with a workers' compensation attorney to represent a civil client in the workers' compensation claim, then the plaintiff's attorney has the benefit of being privy to all social media and surveillance evidence gathered in the workers' compensation case.

### **Invitation of undesired exposure**

Insurance companies and employers have found social media postings to be effective tools in determining both compensability of injuries and the nature and extent of the injuries. Defendants routinely hire investigators to do social media searches and document an injured worker's activities that evidence the injured worker's physical and/or psychological capabilities.

Correspondingly, California courts have been clear on the growing importance of social media evidence and furthered its inclusion in civil cases. Where a civil case is also a third-party case corresponding with a workers' compensation claim, defense attorneys exact a stratagem, using evidence from the workers' compensation claim (social media and surveillance). Because the evidence is initially obtained as a part of the workers' compensation case, civil defense attorneys can evade evidentiary hearings, and avoid alerting plaintiffs to the social media evidence obtained.

It is thus imperative that plaintiffs utilize representation that specializes not only in civil litigation but also in workers' compensation. This can be achieved by aligning with a skilled workers' compensation attorney.



Social media has woven its way into the everyday fabric of people's lives. People share about whereabouts, activities, and emotional state. We must understand the negative impact of social media and sharing of one's status physically and emotionally. Doing so may negatively impact a workers' compensation claim and corresponding civil case. Accordingly, the self-induced exposure is likely to lend to an undesirable result.

The optimal choice may be to refrain from social media participation altogether until the conclusion of one's matter before the court. Where a civil case is related to a workers' compensation claim, the best protection for plaintiff comes from plaintiff's counsel teaming up with a workers' comp attorney.

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