

NO PRIVACY ON THE INTERNET:

How Social Media can Sink
Your Personal Injury Claim



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When it comes to social media, we tend to share too much. This isn't necessarily a bad thing, it keeps our friends and family in the loop about the goings on in our lives, and allows us to stay in touch without having to reach out to our friends and loved ones individually. But social media can be the downfall of a personal injury case. A seemingly innocuous status update may be enough for the defense to question your integrity and have your claim thrown out. It's important to know how to manage your social media footprint if you have an active personal injury case pending.



How Can Social Media be Used Against You?

Many people don't think to start policing their social media accounts just because they have a pending personal injury claim, but seemingly benign social media updates can easily sink a personal injury claim. This is obvious in cases where plaintiffs are overexaggerating the extent of their injuries. For example, if your claim states that an injury caused you to have limited use of your arm, but you post a picture of you swinging a baseball bat or lifting your child after the accident occurred, it clearly shows that your injuries are not as severe as you claimed. But it's not just cases of over exaggeration that can be affected by social media posts. Just as common is the denial of pain and suffering because of something posted on social media. A simple picture of you smiling when your claim states depression as a condition of pain and suffering can help to sink your case.

It's the job of the defense to try to disprove the severity of your claim and to limit the amount that the defendant (or their insurance company) must pay out. One way they do that is by delving into your social media profiles to find postings that could damage your claim or raise questions about your integrity. Defense lawyers still do traditional research as well, such as hiring a private investigator to monitor you when you're outside your home, but social media has become an invaluable tool to destroy personal injury claims and their accompanying assertions of pain and suffering.



No Reasonable Expectation of Privacy

Privacy law in the United States is complicated. Some argue that there is an implicit right to privacy under the Fourth Amendment to the U.S. Constitution, but since the amendment does not explicitly mention privacy, there has been much debate over whether the Constitution actually guarantees a right to privacy. Case law has determined that privacy is a right under the Constitution, but only in situations where citizens have a reasonable expectation of privacy. This means that every time we post something on the internet publicly or provide private information in exchange for a service (e.g. when you sign up for a credit card) we are weakening our expectation, and subsequently, our right to privacy.

You would think that if you have all your privacy settings on your various forms of social media set to “private” that you have a reasonable expectation to privacy, but according to the American Bar Association, the courts have deemed that information posted on social media is for public consumption, and therefore no expectation of privacy exists. That said, if your privacy settings are set to “private,” it will be much harder for the defense to access.



How Should You Limit Social Media Use?

If you currently involved in a personal injury claim, the best action that you can take is to temporarily suspend all your social media accounts, but if you feel that you can't stay away from social media completely, there are ways to continue being active on social media without sinking your case.



DON'T POST ABOUT YOUR CASE.

- Don't post about discussions with your lawyer, difficulties you're having with the defense, your injury, or plans that you have for the money you expect to win from the case.
- Avoid posting pictures of any kind.
- A seemingly innocuous picture of you out to dinner with friends or even a picture of you smiling can help the defense build a case against your claims of pain and suffering.



DON'T POST ABOUT YOUR WEEKEND OR VACATION PLANS.

Showing that you're remaining active and that you're going about your life as if nothing had happened can also weaken your claim of pain and suffering.



DON'T USE "CHECK-IN" FEATURES.

For the same reason that you don't want to post about weekend or vacation plans, it's not a good idea to use the “check-in” feature on Facebook or on platforms like Foursquare.



DON'T ALLOW YOUR FRIENDS TO TAG YOU IN POSTS OR PICTURES.

It's not only your social media activity that can sink your personal injury case, but your friends posts as well. Since there is a reasonable expectation of privacy in private messages, you can private message your friends and ask them not to tag you in any posts or photos until your case has been resolved.



REMOVE ANY OLD POSTS THAT MIGHT BE RELEVANT.

Most posts from before the date of the injury can't be used against you, but one kind that can are posts where you talk about aches and pains. If you've posted that you have a sore neck or back, or anything else that can be related to the claims in your personal injury case, go back and delete those posts. Defense lawyers will be able to use these past posts to try to establish that your injuries were present before the accident.



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If you've been injured due to the negligence of another, contact one of our skilled personal injury attorneys at The Pottenger Law Firm at **(816) 531-6006**, or visit **www.pottengerlaw.com** for a free consultation and information session about how social media can affect your personal injury claim.