



KOPKA PINKUS DOLIN & EADS, LLC

WORKER'S COMPENSATION FRAUD: *A Series of Articles on Why We Should Care, Tips to Prevent it and New Ways of Investigating it with the use of Social Media and the Internet*

WORKER'S COMPENSATION FRAUD PART IV: HOW CAN SEARCHES OF THE INTERNET AND SOCIAL MEDIA ASSIST IN CLAIM INVESTIGATION?

It is often said that the Internet is a time sucker. How often have you begun a search for what is seemingly a simple question or item sought and then realize an hour of time has passed by? The key to using the Internet and social media sites for worker's compensation claims investigation in a successful manner is efficiency. In today's world, time is even more precious than ever. So, this section of our journey will focus on how to use these tools ethically and efficiently.



As we have seen in the previous articles in our series, a real-life example is a good place to start. Here is an example of how old school investigation and new school investigation converge for a successful investigation. A worker claimed he suffered a right extremity injury from repetitive trauma on the job. The circumstances of the injury were somewhat questionable for various reasons since the injury was not timely reported and the employer was notified of the alleged injury some time after the employee was discharged for reasons not related to the worker's compensation injury claimed. The astute claims specialist on this case recognized the red flags and his instincts were further validated when the alleged treatment and complaints did not coincide with one another. This situation led the claims specialist to take the statement of the employee who was allegedly injured. In the statement, the specialist asked some probative questions that revealed the claimant loved music, played several instruments and even had a "hobby" of playing in a band. At this point, a simple Google search of the claimant's name revealed the name of the band. A second search with the name of the band revealed a website for the band which listed dates of "gigs." The website contained references to YouTube video showing the band playing at an event, the video was date-stamped and the alleged injured worker was drumming away vigorously on the skins. The video coincided with the alleged date of injury. A simple Internet search

was able to bring about this highly beneficial data. Incorporating a Google search in claims handling is a quick way to often obtain useful information. Adding terms to glean more specific results such as a hobby can lead to an even more specific production of information. For example, if it is general knowledge that the claimant is a golfer, many golf leagues post schedules and even handicaps on public websites. The same concept also applies to softball leagues, bowling leagues and hunt clubs.

The next level of Internet investigation would involve social media sites. What is social media? At the most basic level, social networks are websites that allow a user to create a profile that contains basic information about oneself and also allows the user to link to other profiles, thereby creating a network. These sites are massive databases of self-reported information. The first type of social media was a product of the academic world. Academia desired to share information and created blogs. Blogs are websites with dated items of content in reverse chronological order; the information is self-published by the bloggers. This form of media can be maintained on a personal server by the user or be part of a "community" of blogs.

The world of social media rapidly changes. What is "in" today might very well be passé in six months. Presently, Facebook is considered the number one player in the game. Statistics show that Facebook has more than 750 million active users with 50% of active users logging onto Facebook in any given day. In total, people spend over 700 billion minutes per month on Facebook. Each user of Facebook has the option to create a profile or general page of information about the user. The profile typically includes information such as a picture, basic information but also personal and business interests, relationship status and basic opinions on any given topic. A Facebook account shows "posts" or comments on a user's profile page by other users or "friends." A user also posts status updates regarding whatever they want with users usually writing about what they are currently doing. Pictures are on the site as well. Again, it is at this point that we must pause and remember, err on the side of caution. While courts are trending towards this information being relevant, not private and thereby, discoverable, ethical considerations are paramount. Thus, as mentioned, entrapment is not advised. Creating a fake user name and "friending" the suspected worker is not advised. Frankly, it is not necessary to engage in such trickery. The information is on a public forum. If an investigation gets to this stage, it is advisable that counsel or an investigative specialist be consulted. Check with your counsel. Make sure that they are savvy to the importance of the information that can be obtained through social media sites. Are they asking these questions in the discovery process? Make sure that when these sites become relevant to the case at hand, counsel is preserving the information.

Facebook is just the leading example of a social networking site where public information can be useful to investigation. Other examples include Twitter, Google+ and LinkedIn. Every day a new social networking site emerges on the scene. In summary, realize that social media posts and shared videos are not enough to make a case but they are an instrumental, efficient tool to help build one.