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Don't Take My Four-Leaf Clover! Court Rules Facebook Posting Doesn't Violate Non-Solicitation Agreement

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In one of the first holdings of its kind, a federal district court in Oklahoma ruled that a former employee's Facebook post, which expressed his professional satisfaction with his new employer's product, did not violate the employee's non-solicitation agreement with his prior employer.

The case, *Pre-Paid Legal Services, Inc. v. Cahill*, concerned a former regional vice president who posted general information about his new employer on private pages he created for the employer. The employee also actively posted information relating to his new employer on his personal Facebook page. Moreover, his Twitter account generated invitations to associates to join the social networking site but not specifically follow him on Twitter. For that reason, the employer was not entitled to a preliminary injunction based on breach of his non-solicitation agreement.

Specifically, the court ruled that the former employee's ongoing posts to his personal Facebook page that related to his new employer did not constitute solicitation under a close reading of his non-solicitation agreement. Comparing to a case involving LinkedIn, the court found the employee's conduct in this instance was "less explicitly inviting professional interest" in his new employer than in posting a job opportunity, which could have, but did not, violate his non-solicitation clause. In that case, the employer was also denied a preliminary injunction.

The *Cahill* court also looked to a case involving solicitation via Facebook, where the employee's new employer posted an announcement about the employee's new position and the employee then became Facebook friends with several of his former employer's clients. In that case, the employer's motion for a preliminary injunction was also denied absent evidence that the Facebook posts resulted in any departures from the former employer to the new employer.

In *Cahill*, the court ultimately ruled in the employee's favor for two reasons. First, no evidence existed that any specific individuals were targeted to "follow" the employee on Twitter, or that the employee's Twitter feed contained information about either his former employer or new employer. Second, evidence seemed to suggest that these invitations were automatically generated by Facebook itself. Indeed, the invitations were sent to, among others, the CEO and general counsel of the employee's former company. For that reason, the court found it "implausible" that the departed employee targeted the invitees himself.

If you have questions about how this case will affect your non-solicitation agreements, or if you have a particularly thorny non-solicitation issue, please contact any of our more than 70 Labor & Employment attorneys located in [Birmingham, Alabama](#); [Atlanta, Georgia](#); [Baton Rouge, Mandeville and New Orleans, Louisiana](#); [Jackson, Mississippi](#); [Chattanooga, Johnson City, Knoxville, Memphis and Nashville, Tennessee](#); and [Houston, Texas](#).