

## Employees Have The Right To Use Employers' Email Systems For Non-Business Purposes

The National Labor Relations Board (NLRB) issued a decision in *Purple Communications, Inc.*, holding that employees have the right to use their employers' email systems for non-business purposes, including communicating about union organizing, on non-working time. This decision, handed down on December 11th, overrules the 2007 decision of the NLRB in *Register Guard*, which found that employees had no statutory right to use their employer's email systems for Section 7 purposes. According to the NLRB in *Purple Communications, Inc.*, employee use of email for "statutorily protected communications" on non-working time must presumptively be permitted by employers who have chosen to give employees access to their email systems.

This decision includes limits on the scope of this newly defined employee right. First, the decision applies only to employees who have been granted access to employers' email systems and does not require employers to provide such access. Second, an employer may justify a total ban on non-work use of email by demonstrating that special circumstances make the ban necessary to maintain production or discipline. Absent justification for a total ban, an employer may apply uniform and consistently enforced controls over its email systems to the extent such controls are necessary to maintain production and discipline. The NLRB acknowledged that its decision cannot address all questions that may arise from an employee's use of an employer's email system on non-working time for statutorily protected purposes, but it does recognize the acceleration of technological changes within the workplace.

As a result of the decision in *Purple Communications, Inc.*, employers should review their electronic communications and internet use policies, particularly if employees have been granted access to employers' email systems, and determine whether the policies may improperly pose an absolute ban on the use of email on non-working time.

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