

PUBLICATION

Per NLRB, Employees May Use Company Email For Union Organizing

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On December 11, 2014, the National Labor Relations Board (NLRB), through a divided panel, held that employees may use employer-provided email systems for union organizing. Specifically, the NLRB held "employee use of email for statutorily protected communications on nonworking time must presumptively be permitted by employers who have chosen to give employees access to their email systems." *Purple Communications, Inc., et al.*; No. 21-CA-095151. In so doing, the Obama NLRB overturned the Bush NLRB's 2007 decision in *Register Guard*, calling the prior ruling "clearly incorrect."

The decision said:

The workplace is "uniquely appropriate" and "the natural gathering place" for such communications, and the use of email as a common form of workplace communication has expanded dramatically in recent years. Consistent with the purposes and policies of the [A]ct our obligation to accommodate the competing rights of employers and employees, we decide today that employee use of email for statutorily protected communications on nonworking time must presumptively be permitted by employers who have chosen to give employees access to their email systems.

...

By focusing too much on employers' property rights and too little on the importance of email as a means of workplace communication, the Board [in its original *Register-Guard* decision] failed to adequately protect employees' rights under the Act and abdicated its responsibility to "adapt the Act to the changing patterns of industrial life."

Despite its monumental policy shift, Thursday's decision fell short of declaring Purple Communications' policy unlawful, and the NLRB did note important limitations of its decision. The decision "seeks to accommodate employees' Section 7 rights to communicate and the legitimate interests of their employers." As such, the decision does not require employers to provide email to its employees for organizing purposes; it only applies to those employees who have already been given access to employer email. Additionally, an employer may totally ban "all non-work use of email, including Section 7 use on nonworking time, by demonstrating that special circumstances make the ban necessary to maintain production or discipline." If there is no justification for a total ban, "the employer may apply uniform and consistently enforced controls over its email system to the extent such controls are necessary to maintain production and discipline."

The NLRB did not address email access by nonemployees or any other type of electronic communications.

What does this mean for employers? If you allow your employees to send non-work emails during non-work hours, you must allow employees to use your email system to the same extent for collective bargaining purposes. For example, if an employee can use the company email to organize a happy hour for Friday afternoon or to sell Girl Scout cookies, Avon, World's Best Chocolate, Advocare, etc., you must allow them the same use of your email system for union organizing.

