

Change in Rules Related to Employee Communications and Use of Employer's E-mail

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Since its 2007 Register Guard decision, the National Labor Relations Board ("NLRB") has taken the position that employees have no statutory right to use company email for Section 7 purposes (e.g., email communications regarding union organizing or other protected concerted activity). In Purple Communications, Inc., the NLRB reversed its prior decision, holding that "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 system." The implications of this decision and the scope of what it permits and how it will impact employer's policies and procedure is yet to be determined and requires the consultation of a labor attorney.

However, this does raise various issues for HR departments to keep in mind as they interact with employees. For example, this may raise issues for employers who monitor email communications as part of the employer's health plan's HIPAA Privacy and Security compliance efforts because the interaction of HIPAA Privacy and Security with the NLRA's prohibition on certain activities which may constitute unfair labor practices, interference or retaliation has not been addressed to date. If this decision is not overturned by the courts, it may also require employers to amend their handbooks and policies regarding use of the company's electronic communications where use of its email and other electronic systems is strictly limited to business purposes. We anticipate this decision will be appealed to the courts that may have a different view than the current pro-labor majority composition of Board members.

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