Employers – Be Prepared to Revise Your Email Policies

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It's official; the longstanding rule of the National Labor Relations Board (NLRB) that employees have no statutory right to use work email for communications with each other regarding unionizing activities has changed. On December 10, 2014, the board decided that so long as employees have been given authorized access to the employer's email system, employees may use the email system during non-working time for non-business communications. With this change in precedent comes the need for employers to review their email policies.

Although employees are allowed to communicate with each other at work regarding unionizing and other terms of employment pursuant to Section 7 of the National Labor Relations Act, until now email communications had been excluded. In the recent *Purple Communications Inc., v. Communications Workers of America* decision, the NLRB has announced that because email is the "predominant means" of communication at the workplace, employees should be able to communicate with each other regarding unionizing activities. However, this ruling applies only to employees who have already been granted access to the employer's email system, and does not require employers to provide access to non-employees.

Unless an employer is able to justify a total ban on non-work use of email, the board noted that the employer may still apply controls over its email system to the extent that it is necessary to maintain production and discipline. Despite the NLRB ruling that this change is applicable to email only, commentators suggest that there is the possibility that this decision may impact policies related to other communication technologies, such as phones or instant messaging programs—only time will tell. In the meantime, employers are encouraged to ensure that current email communications policies are in compliance with this new decision so as to avoid claims of unfair labor practices.

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