2015 Policy Review and Revision: Employer Email

Insights
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We're going to comment on the numerous policies and rules which must be revised because of the NLRB's many changes last year; especially during December 2014.Today, we'll briefly discuss email.

The NLRB issued its Purple Communications Decision on December 11 and held that if an employer allows employees to use its email system at work, they must presumptively permit use of that employer-provided email system for *"statutorily protected communications on non-working time."* The NLRB acknowledged that email communications are the modern day equivalent of talking around the water cooler.This means that an employer may not totally ban personal use of its email system by employees.

The decision does not necessarily permit outsiders or non-employees to use an employer's email system. It also does not require an employer to provide email access to employees who have not previously been given access.However, the ruling will embolden employees to misuse employer electronic communications, whether a union is involved or not.

An employer may rebut the presumption authorizing employee use of company email by showing that "special circumstances" justify restricting employees' rights, such as restrictions that are necessary to maintain production or discipline, BUT the NLRB stated that, *"it will be a rare case where special circumstances justify a total ban on nonwork email use by employees."*Merely citing a potential issue or pointing to an existing ban on personal emails will not suffice.

The Board ruling does not prevent employers from monitoring employee use of computers and email for legitimate management reasons, so long as it can establish a past practice of doing so. For example, it would presumably allow continued monitoring of employee email to ensure productivity, to prevent harassment or other potential problematic behavior or other similar legitimate reasons.The Board stated that employers may notify employees that it reserves the right to monitor computer and email use and that employees should have no expectation of privacy in their use of the company email system. The Board cautioned, however, that employers may not increase its monitoring during a union organizing campaign or focus monitoring efforts on union activists or protected conduct.

The Board also stated that companies may establish and enforce policies related to email use, such

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as prohibiting large attachments or audio/video segments, if the employer can show that the policy is needed for the efficient functioning of the email system. Any such restriction must be uniformly and consistently enforced and must be necessary to maintaining discipline, productivity or the system.

In-house union organizers, who themselves may serve their outside organizer counterparts, now have a way to get out the union message cheaply, quickly and frequently. On the other hand, will pro union employees regularly want to identify themselves or disclose their strategies and issues?That's why texting has become the union organizing tool of choice. (See, Labor Alert)

Of even more concern is the continued growth of employees claiming that they were addressing wages, benefits and working conditions when faced with discipline for abuse of the employer's communications systems.

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