



# NLRB Confirms Prohibiting Use Of Company Equipment, Including Work Emails, Is Lawful

Insights

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The National Labor Relations Board decided yesterday that employees have no statutory right to use an employer's equipment, including work emails and IT resources. Therefore, employers may legally restrict the use of their equipment, such as work emails, even for union organizing activities or for other activities protected under Section 7 of the National Labor Relations Act. In reversing a significant Obama-era ruling, the *Caesar's Entertainment* decision holds that employees' statutory rights to engage in protected, Section 7 activities must yield to the property rights of employers to control the use of their equipment, provided that employers do not target union-related communications and activity and that employees have reasonable alternate means of communication available to them.

## Background

Caesar's Entertainment, Inc., which runs a casino and hotel in Las Vegas, Nevada, has a central facility where all employees report and work. The facility includes several common areas where employees are allowed to solicit and distribute non-work-related communications. The company's handbook, which all employees were required to sign, contained a "Computer Usage" provision that prohibited the use of the company's IT systems for various purposes, including sharing confidential information, sending chain letters, soliciting for personal gain or advancing personal views, visiting inappropriate websites, and excessive use of personal email.

Ultimately, an administrative law judge ruled that Caesar's violated Section 8(a)(1) of the National Labor Relations Act (NLRA) by maintaining a prohibition against employees sending "chain letters or other forms of non-business information" based on the NLRB's 2014 *Purple Communications* decision.

## ***Purple Communications* Is Overruled**

The charging party and a host of advocates representing union interests argued that the *Purple Communications* holding was the appropriate standard. *Purple Communications* held that if an employer provides employees access to an email system, the employer cannot prevent employees from using that email system for activities protected under the Act during non-worktime unless "special circumstances" exist.

However, the NLRB agreed with Caesar's, finding that the *Purple Communications* decision placed too little weight on the employer's property rights in their IT resources and overstated the importance of those resources in Section 7 activity. Stating that "in the typical workplace, oral solicitation and face-to-face literature distribution provide more than 'adequate avenues of communication'."

The NLRB also noted the prevalence of smartphones, personal email, and social media and held that "an employer does not violate the Act by restricting the nonbusiness use of its IT resources absent proof that employees would otherwise be deprived of any reasonable means of communicating with each other, or proof of discrimination." The holding in *Caesar's Entertainment* is a return to the standard initially formulated in the NLRB's 2007 *Register Guard* decision – i.e., that "employees have no statutory right to use employer equipment, including IT resources, for Section 7 purposes."

### **What Now?**

In light of this ruling, employers should evaluate their current work rules and make sure that any needed and justified limits on the use of company equipment, including IT systems and emails, are sufficiently and clearly documented. This evaluation would need to include a review of how any restrictions on the use of company equipment impact employee communications to ensure there are no issues with discriminatory limits on activities protected under the Act.

If you have a pending matter before the NLRB on this issue, you are in luck. The NLRB said it will apply the new standard retroactively to all pending cases challenging employers' rules restricting the use of IT resources for nonwork purposes. You should consult with your labor counsel to determine how this decision will impact you.

The *Caesar's Entertainment* ruling is one in a series through which the NLRB, now under Republican leadership, is construing the Act to once again balance the interests of employers along with the needs of employees. We expect more cases to be handed down in the near future and recommend you subscribe to [Fisher Phillips' alert system](#) to ensure you are receiving the most up-to-date information. If you have questions about this decision, please contact your Fisher Phillips attorney or any member of our [Labor Relations Practice Group](#).

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