

KD Alert: NLRB Reverses Course and Allows Employees to Use Employer Email Systems for Non-Work Purposes

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A recent decision by the National Labor Relations Board has eroded employer protections against employee use of company email systems for non-work related purposes. On December 11, 2014, the NLRB held in Purple Communications, Inc. that employee use of company email systems for statutorily protected communications on non-working time must be permitted by employers. This constitutes a complete reversal of precedent by the NLRB and requires all employers to reevaluate their computer use policies for employees.

In Purple Communications, the NLRB reversed its prior decision in Register Guard and held that employees may use company email systems to communicate and engage in union organizing and other activity protected by section 7 of the National Labor Relations Act during non-working hours. The NLRB distinguished email from other uses of employer equipment, such as bulletin boards, instead likening its use to face-to-face oral communications. The decision allows employers to continue monitoring email systems for legitimate management reasons, but also indicated that such monitoring may not be increased during union organizing efforts or specifically focused on union activities and other protected conduct.

The NLRB somewhat narrowed the breadth of its decision in some respects. First, the decision only applies to employees who are already provided with access to company email, and the NLRB is not requiring employers to grant all employees email access. Second, the NLRB indicated that, in rare instances, employers may be able to justify a total ban on non-work use of email by demonstrating special circumstances that make a ban necessary to maintain production or discipline. Finally, the NLRB indicated that employers may maintain uniform and consistently enforced controls over their email systems, such as prohibitions on large attachments. However, the NLRB was clear that any restrictions must be narrowly tailored, uniformly applied, and directly connected to issues related to productivity and discipline.

The attorneys at Kaufman Dolowich & Voluck are available to assist employers in reviewing their computer usage and related policies to ensure compliance with this decision. Additionally, our attorneys are available to assist employers in addressing union organizing campaigns in the face of the new difficulties imposed by this decision.