

NLRB Reverses Precedent, Finds Employees Have the Presumptive Right to Use Employer Email System for Protected Activity

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On December 11, in the case of *Purple Communications, Inc.*, the National Labor Relations Board (NLRB) ruled that employees have the right to use their employers' email systems for non-business purposes, including for union organizing. Until yesterday, employees did not have a statutory right to use their employers' email systems for union organizing or for other non-business purposes. The NLRB's 2007 decision in the *Register Guard* case held that employees have no statutory right to use employer email for activities covered by section 7 of the National Labor Relations Act. In *Purple Communications, Inc.*, the NLRB overruled the *Register Guard* case, calling it "clearly incorrect."

According to the *Purple Communications, Inc.* decision, "employee use of email for statutorily protected communications on nonworking time must presumptively be permitted by employers who have chosen to give employees access to their email systems." So if employees are permitted access to a company email system, they may use the company's email system to discuss workplace issues, including union organization.

Purple Communications may appeal this decision. The NLRB, however, will continue to rely on this decision as precedent, unless and until a court prohibits the NLRB from doing so. As it currently stands, employers will need to take a serious look at their policies regarding employees' use of company email for personal reasons. Ultimately, some employers will be forced to decide between prohibiting employees from using a company email system for *any* non-business purpose or risking a possible union organizing campaign orchestrated through the company's own email system.

Please contact a member of Barley Snyder's [Employment Law Group](#) with any questions about the NLRB's *Purple Communications, Inc.* decision.