

NLRB Rejects Ban On Personal E-mail At Work

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On December 11, the National Labor Relations Board (NLRB) continued to intrude into the workplace by holding that employees have a right to use their employer's email system for union organizing purposes and other "concerted activities." This decision (*Purple Communications, Inc. and Communications Workers of America*, AFL CIO, 361 NLRB No. 126) reverses prior NLRB precedent and continues the Board's trend of expanding its relevance into all workplace settings.

The *Purple Communications* decision is just the latest move by the NLRB to regulate company policies that limit employees' communications in the workplace and about work. The NLRB hasn't been shy about taking on company policies regarding confidentiality and the use of social media. Among other things, the NLRB has deemed unlawful company prohibitions on employee critiques of management. This has been the case even where the workplace is not unionized.

In *Purple Communications*, the NLRB scrutinized a standard policy limiting company email use to business purposes and prohibiting personal email use. Previously, the NLRB held that employees have no right to use company email systems for concerted activities. However, the NLRB has now concluded its precedent was "clearly incorrect," holding that email has become a critical means of communication, essential to concerted activities. Importantly, the NLRB noted that it will be the rare case where a company can restrict email. Lengthy dissents were issued by two Board members, pointing out that the decision is confusing, difficult to apply, interferes with employer's legitimate interests, and violates employers' First Amendment rights.

If the policy imposes a complete ban on personal use, it is unlikely to be upheld by the NLRB and will have to be carefully tailored based on the nature and needs of your business. This tailoring process should involve input from legal, human resources, IT, and business constituents of your organization.