

Northern New England

MONDAY MORNING MINUTE

December 22, 2014

NLRB Rules that Employees May Use Employers' Email to Engage in Protected Activity

In a 3-2 decision issued on December 11, 2014, the National Labor Relations Board (NLRB) ruled that employees who have been granted access to their employer's email system are entitled to use the employer's email system to communicate with other employees about wages, working conditions and union organization during "non-working time." The ruling was hailed as a "great victory" by the Communication Workers of America, which filed an unfair labor practice charge against Purple Communications, Inc. challenging its email policy which barred employees from using company email for non-business reasons. The majority of the Board concluded that its 2007 decision in *Guard Publishing Company d/b/a Register Guard*, holding that employees had no statutory right of access to employers' email systems, could not be permitted to stand because it failed to recognize that email has become the "predominant means of employee-to-employee communication."

The NLRB recognized two limitations to the presumptive right of an employee to use company email for protected communications: (1) an employer is not required to grant email access to its employees and (2) an employer may ban non-work related emails if it can show that "special circumstances" make such a ban necessary to maintain production or discipline.

The NLRB explicitly acknowledged that its decision in *Purple Communications, Inc.* did not address whether employees have the right to use an employer's email to communicate with third parties, including unions.

The dissenting opinions in *Purple Communications, Inc.* pointed out that employees have access to social media sites and electronic communication resources that "are far more effective, more user friendly, and more conducive to facilitating concerted activities than employer email systems," and argued that, given email and computer usage in most workplaces, the

For specific information or answers to questions, please contact any of the attorneys in the Portsmouth, NH office:

Attorney Debra Weiss Ford
(603) 559-2727
Debra.Ford@jacksonlewis.com

Attorney Martha Van Oot
(603) 559-2735
Martha.VanOot@jacksonlewis.com

Attorney Daniel P. Schwarz
(603) 559-2730
Daniel.Schwarz@jacksonlewis.com

Attorney Thomas M. Closson
(603) 559-2729
Thomas.Closson@jacksonlewis.com

Attorney Nancy E. Oliver
(603) 559-2725
Nancy.Oliver@jacksonlewis.com

Attorney Elizabeth J. Baker
(603) 559-2722
Elizabeth.Baker@jacksonlewis.com

Attorney K. Joshua Scott
(603) 559-2711
Joshua.Scott@jacksonlewis.com

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newly recognized right of email access “will make it all but impossible to determine whether or what communications violate lawful restrictions against solicitation during working hours.”

Employers with policies and rules regarding employee use of email (and other employer-owned resources), including the employer’s right to monitor such usage, should carefully review their rules and policies and, if necessary, amend them to ensure that they do not violate the right of employee access recognized in *Purple Communications, Inc.*

Your Jackson Lewis attorney can answer questions regarding this and other employment law issues.



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