Far-Reaching NLRB Decision Effectively Bans Strict "Company-Use-Only" Email Policies

Labor & Employment Law Update

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Earlier this month the NLRB reversed establish precedent, ruling employers can no longer prohibit employees from using company email to engage in "protected concerted activity" or union organizing efforts during non-work time.

Section 7 of the National Labor Relations Act guarantees all employees, union and non-union employees alike, the right to organize and "engage in … concerted activities for … mutual aid or protection." But recognizing employers' property rights in company-managed email systems, the NLRB had long upheld employers' right to ban non-work related communications on company email systems, including communications that would otherwise be afforded section 7 protection.

On December 11, 2014 the NLRB reversed course, stating, "we decide today that 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."

Under the new standard set forth in the NLRB's *Purple Communications* decision, both union and non-union employees have a legally-protected right to use their company-provided email accounts to gripe about working conditions, discuss pay issues and other terms and conditions of employment, and engage in union organizing efforts during non-working time.

The decision does *not* require any employer to provide its employees with email access. Nor does it demand employers tolerate non-work related email activity *during working time*. Moreover, an employer may monitor its company computer equipment and email systems so long as it does not do so in a discriminatory manner. Finally, the decision allows employers to establish uniform and consistently-enforced restrictions on email use so long as they are justified by legitimate business needs.

What should a prudent employer do now? Carefully review your current policies. Does your policy prohibit or severely limit use of company email for non-work purposes? If so it is likely too broad and in need of a revision. A policy that was perfectly legal at the time it was written may be unlawfully restrictive today. Under the new rule, any restrictions that apply to the use of company email during non-work time must be clearly articulated and sufficiently justified.

Amundsen Davis's team of experienced Labor and Employment attorneys are available to review these and other policies and, when necessary, will assist your organization to revise those policies to ensure they are up to date and in line with new legal standards.