

Duff on Hospitality Law

How Does the NLRB's Ruling on Non-Business Use of Email Affect Your Business?

on 2.5.15 | Posted in Employment Law, Technology

Are your employees using company email during nonworking hours? This blog brings the latest developments in NLRB's ruling and important policy changes that employers can implement to comply with the ruling. Thank you! – Greg

As you may have heard, the [NLRB](#) recently ruled that employees who are given access to their employer's email system for their jobs must be permitted to use that email system during nonworking time to engage in protected activity, such as forming a union or discussing terms and conditions of employment. This ruling applies to both unionized and non-unionized workforces. The ruling has caused some controversy because it overturned long-established precedent. It is not, however, a reason to panic. Employers who are already complying with the NLRB's guidance on social media need only make a few changes to their policies.

The case is called *Purple Communications, Inc.*, and all 70-plus pages of the order are available [here](#) (under "Board Decision" dated 12/11/2014). The rule before this case was that an employer had the right to restrict non-business use of its email system, so long as it did so in a non-discriminatory fashion. In *Purple*, the Board held that employees must be granted access to use their employer's email system during nonworking time to engage in protected activity, such as discussing terms and conditions of employment. Employers with a strict rule that work email is for business use only will therefore need to revise their policy to allow employees to use company email during nonworking time to engage in protected activity. There are some limited exceptions to this rule, for circumstances where permitting use of company email for protected activity will seriously disrupt productivity or business operations. If you think this is the case for your business, please [contact us](#), and we can help you craft a policy that should satisfy the NLRB.

If, like many employers, you already allow non-business use of work email during nonworking time, this decision still impacts you. Most employers have some kind of policy that regulates what employees can do on the company's email and other communication systems. Because the *Purple* ruling requires employers to allow employees to use company email to engage in protected activity, restrictions that infringe on this right are no longer OK. This, too, is no reason to panic, however, because it simply means your use of technology policy has to look a bit

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more like your social media policy (you have one of those, right?). As discussed in the blog posts available [here](#), the Board has already issued a series of rulings and memoranda explaining how it will evaluate social media policies. Generally speaking, the Board has stated that a policy will be struck down if it could be read by a reasonable employee to prohibit protected activity, such as engaging in collective action or discussing conditions of employment.

Although *Purple Communications* was a dramatic opinion, in that it overturned decades of previous Board law, it should not be difficult for businesses to adapt.

If you have any questions about how to comply with this decision, we would be happy to help. Please feel free to contact [Greg Duff](#).

Tags: NLRB, Purple Communications, Social Media Policies