

EMPLOYER LAW BLOG

EMPLOYER ALERT- NLRB Extends Employees' Right to Engage in Protected and Concerted Activity to Employer's E-mail Systems

AUTHOR: SANDBERG PHOENIX

By Timm W. Schowalter

The National Labor Relations Board, in its continued effort to assist labor unions and employee unionization efforts, has provided employees with an effective organizing tool—their employer's own email systems. In 2007, the NLRB in *Register Guard* held "employees can have no statutory right to use their employer's email systems for Section 7 purposes." But, on December 11th, the NLRB reversed course and expanded employees' existing rights to communicate in the workplace about their terms and conditions of employment to reach communications over employer e-mail systems. In *Purple Communications* the NLRB held that employees are presumptively permitted to use their employer's email systems during non-work time for Section 7 activities if employers give employees access to their email systems. Unless there are "special circumstances" justifying a total ban on non-work use of e-mail, the Board's new *Purple Communications* standard requires employers to accommodate employees' use of e-mail for protected concerted activity during non-work time, subject only to "uniform and consistently enforced controls" that are "necessary to maintain production and discipline."

Employer Lessons: Employers must immediately review and evaluate any work rules, handbooks, or policies related to electronic communications systems to ensure that they will withstand NLRB scrutiny. In conducting this review, Sandberg Phoenix & von Gontard, P.C.'s Labor and Employment Law Team can assist in adding or modifying current language to ensure their policy protects their business interests without interfering with activities protected under the Act.