EMPLOYMENT LAWSCENE ALERT: NLRB GENERAL COUNSEL ISSUES GUIDANCE ON EMPLOYEE HANDBOOKS

On March 18, 2015, the NLRB General Counsel issued a report concerning recent cases that raise significant legal and policy issues regarding employee handbook rules. Recently, the NLRB has been focusing on non-union employer's handbooks and whether they violate Section 7 of the NLRA, which permits employees to discuss wages, hours, and other terms and conditions of employment and to otherwise engage in protected concerted activity. The most clear violation of Section 7 would be a ban on union activity; however, if an employee could reasonably construe a rule or policy to prohibit activities protected by Section 7, the NRLB will find that it is in violation of the law. The report gives specific examples of handbook policies that were found lawful and unlawful and why. The report specifically states that even well-intentioned rules that would inhibit employees from engaging in activities protected by the Act are not allowed under the law. The rules and policies that are most frequently called into question are those covering confidentiality, professionalism, anti-harassment, trademark, photography/recording, and media contact.

Confidentiality policies cannot specifically prohibit employees from discussing the terms and conditions of their employment (e.g., wages, hours, workplace complaints), nor can the policies be reasonably understood to prohibit such discussions. Policies cannot broadly define "employee" or "personnel" information as confidential. However, the NLRB does recognize that employers have a substantial and legitimate interest in maintaining the privacy of certain business information.

Employee conduct policies will run afoul of the NLRA if they prohibit employees from engaging in disrespectful, negative, inappropriate, or rude conduct toward the employer or management absent sufficient clarification or context. Even false or defamatory statements can find protection under Section 7 unless they are "maliciously false." Employers can promulgate blanket rules that require employees to be respectful and professional to clients and competitors because there is a sufficient business interest in that behavior. Employers are also permitted to ban insubordinate behavior. However, employers cannot ban employees from negative or inappropriate discussions with their fellow employees because employees have the right to argue and debate with each other about unions, management, and the terms and conditions of employment, which can sometimes be contentious. Therefore, anti-harassment rules cannot be overly broad either. Employers cannot ban employees from discussing terms and conditions of employment with third parties, including news media. Although employers may designate who can make official statements to the media on behalf of the company, they cannot ban employees from speaking to third parties on their own behalf or on behalf of other employees.

Although employers have an interest in protecting their intellectual property, the NLRB has taken the stance that rules prohibiting employees' fair use of that property are unlawful. This "fair use" includes using things such as company names and logos on picket signs, leaflets, and other protest material because these are non-commercial uses. According to the report, employees have a Section 7 right to photograph and make recordings in furtherance of their protected concerted activity, including the right to use personal devices to take such pictures and recordings. Therefore, a total ban on photography, recordings, or use of personal devices is overbroad if it can be read to prohibit use during breaks and other non-work time.

Employer rules regulating when employees can leave work are unlawful if employees could reasonably read them as forbidding protected strikes and walkouts, as the right to go on strike is a fundamental Section 7 right. Policies should reflect that leaving their posts for reasons unrelated to protected activity will subject employees to discipline.

Because Section 7 allows employees to engage in activity to improve their terms and conditions of employment, which may be in conflict with the interests of an employer, broad conflict-of-interest policies are unlawful. Employer policies should be limited to legitimate business interests.

The differences between what is lawful and what is not are incredibly nuanced, and the General Counsel's report did not present what could be considered "bright line" rules. The NLRB has stated that it will read rules in context with other rules and not in isolation, which could lead potentially unlawful policies to be held lawful in context. Overall, the emphasis is that rules need to be narrowly tailored and include context and examples in order to steer clear of violating the NLRA.

It should be noted that the General Counsel's report is not law but, instead, represents the current enforcement policy of the NLRB. However, given the NLRB's recent aggressive position relative to enforcing Section 7 rights in non-union workplaces, employers should review their handbooks to determine if any of their rules or policies may run afoul of the NLRB's current set of enforcement policies concerning employee handbooks.

EMPLOYMENT LAWSCENE ALERT: WISCONSIN ASSEMBLY PASSES RIGHT-TO-WORK BILL — GOVERNOR WALKER EXPECTED TO SIGN BILL

ON MONDAY

Today, Friday, March 6, 2015, the Wisconsin State Assembly after a marathon session passed right-to-work legislation by a vote of 62 to 35. The State Senate had previously approved the right-to-work legislation by a vote of 17 to 15 the previous week. The votes were cast according to party lines. The fast-tracked bill will be sent to Governor Scott Walker for signature, which could occur as early as Monday. The bill is aimed at making Wisconsin more attractive to businesses by prohibiting as a condition of employment membership in a labor organization, and, accordingly, provides employees the freedom to choose as to whether they want to pay union dues. Union supporters strongly opposed the bill arguing that the bill harms unions and slows job growth. However, Republican Assembly Speaker Robin Vos said that in Indiana, which passed a similar bill in 2012, unions have not shrunk and jobs have grown.

Once Governor Walker signs the bill, Wisconsin will become the 25th right-to-work state in the country following recent right-to-work legislation passed in Indiana and Michigan. The right-to-work legislation will affect only private-sector workers. The Wisconsin bill would make it a crime punishable by up to nine months in jail to require a worker who is not in a union to pay dues.

Right-to-work is an often misinterpreted concept, as it does not guarantee any right to employment. Under federal labor law, a union that is elected to represent a bargaining unit must represent all workers, even those who have voted against the union. In states that do not have right-to-work laws, all employees in the bargaining unit are required to pay their fair share of union dues for that representation, even if they voted against the union and do not wish to pay union dues. In right-to-work states, however, which Wisconsin will soon be, employees cannot be compelled to pay any union dues or fees in a workplace where an union represents employees through a collective bargaining agreement even though such employees will be covered by the collective bargaining agreement. Wisconsin's right-to-work legislation also makes it unlawful to require any individual to become or remain a member of an union.

Once Governor Walker signs the bill, the new right-to-work law will apply upon the renewal, modification, or extension of any private sector collective bargaining agreement. This means that for collective bargaining agreements currently in place as of the time of enactment of the law, employees would still be required to pay their fair share of union dues and remain members of the union for the remaining term of the agreement. However, for any collective bargaining agreement entered into, renewed or modified after enactment of the legislation, any union security clause requiring employees to be members of the union or any requirement for employees to pay union dues would no longer be enforceable.

EMPLOYMENT LAWSCENE ALERT: NLRB ISSUES NEW RULES FOR UNION ELECTIONS

On Monday, December 15, 2014, the National Labor Relations Board (NLRB) issued rules that will speed up the union election process. Although the rules do not take effect until April 14, 2015, employers should be aware of them and start preparing for the changes now.

Under the current rules, representation petitions are filed seeking to have the NLRB conduct an election to determine if employees wish to be represented by a union for the purposes of collective bargaining with their employer. The Board then investigates these petitions to determine if an election should be conducted and will direct the election, if appropriate. There is currently a 25-day minimum period of time between the filing of a petition and the date of an election. Parties must agree prior to the election on the voting unit and other issues.   If the parties do not agree, the 25-day minimum can be extended in order to hold a pre-election hearing and, if necessary, a post-election hearing. Currently, that date as to when the pre- and post-election hearings are held can vary by Region. Also, under current rules, parties are not required to identify all specific issues in dispute, and litigation on voter eligibility and inclusion can occur prior to the determination of whether an election should be held.

Under the new NLRB rules, the road to a representation election will be substantially different and quicker. There will no longer be a minimum time frame between the date of the petition and the date of the election. This means that since representation elections will happen more quickly and with a shortened time frame to an election; and employers will be severely limited in their ability to properly and effectively communicate with their employees about the pros and cons of union representation. While the NLRB did not specify any date certain as to when an election must be conducted, under the new expedited election rules, it is anticipated that an election will now occur between 10 and 21 days after the filing of a petition as compared with the current 38 to 45 day time frame.

Now petitions can be filed and transmitted between the parties electronically. With the filing of a representation petition, the petitioning union must also file a letter of position and evidence that employees support the petition (the “showing of interest”). Upon receipt, an employer must post and distribute to employees an NLRB notice about the petition and the potential for an election to follow.

The regional director will now set a pre-election hearing eight (8) days after a petition is filed. The purpose of the pre-election hearing is limited in scope and is designed to determine whether there is a “question of representation.” Employers will be required to file a letter of position prior to the pre-election hearing identifying all issues that the employer wishes to litigate before the election. In addition, employers must also provide a list of the names, shifts, work locations, and job classifications of the employees in the petitioned-for unit, and any other employees that it seeks to add to the unit based upon a community of interests. Based upon the evidence presented at the hearing, the regional director will decide whether an election should be held and which, if any, voter eligibility questions should be litigated prior to the election.

If an election is directed, the regional director will ordinarily transmit the notice of election at the same time as the direction of election and will specify in the direction of election the election details, such as the date, time, place and type of election and the payroll period for eligibility. An election date will be set for the earliest date practicable. Now there is a new *Excelsior* list requirement as an employer, within two (2) days after a direction of election is issued (as opposed to seven (7) days under the previous rules), must provide a list of employees eligible to vote that now must include employees' personal phone numbers and email addresses, if available.

The NLRB regional office will then conduct the election and, if necessary, hold a post-election hearing to resolve any challenges to voters' eligibility and objections to the conduct of the election or conduct affecting the results of the election. While objections to voter eligibility had been a pre-election issue, it will now be held off until after the election in the event that the objection becomes moot. However, any issues not raised in the employer's position statement will most likely be considered waived by the NLRB. The post-election hearing will be scheduled 14 days after the filings of objections.

Although there is already a pending legal challenge to the new NLRB rule, a suit filed by the U.S. Chamber of Commerce and several trade associations, and there are likely to be others, employers should prepare for these rules to be enforced as the NLRB's new rules are game changers for employers. Employers will have less time to effectively communicate with their employees and employees will have less time formulate their true desires as to whether union representation serves their best interests.

Importantly, employers should not wait until an election petition is filed to address workplace issues that may lead to a representation petition being filed. Employers will need to be proactive in informing their employees about their stance on union-related issues and making sure that employees feel that their concerns are being heard and addressed by the employer. Employers should also train supervisors to be aware of issues that could lead to employees' desire to unionize. If an employer anticipates or suspects that any type of union organizing activities is occurring within its workplace, delaying a response is no longer a viable option. Now, employers will be required to immediately begin the process of drafting communications to employees upon any indication of organizing activities and devise a sound and lawful strategy as to how it will confront any attempt to organize well before a petition is filed. Waiting to act until a petition is filed may be too late!

EMPLOYMENT LAWSCENE ALERT: NLRB DECIDES THAT WORKERS CAN USE THEIR EMPLOYERS EMAIL — EVEN FOR UNION ORGANIZING

On December 11, 2014, in *Purple Communications, Inc.*, the NLRB overturned its 2007 *Register Guard* decision and held that employees have the right to use their employers' email systems for nonbusiness purposes, including communicating about union organizing. The NLRB emphasized the importance of email as a critical means of communication for employees, especially in today's workplace culture, and noted that some personal use of an employer email system is common and often accepted by employers. Because communication among employees is a foundation for the exercise of Section 7 rights, the NLRB held that employers who have chosen to give employees access to their email systems must now permit those employees to use those systems for statutorily protected communications on nonworking time. Employers are permitted to monitor employees' email use to ensure that it is being used properly. Employers will not be engaged in unlawful surveillance of Section 7 activity unless they do something "out of the ordinary," such as increasing monitoring during an organizational campaign or focusing monitoring effects on protected conduct or union activists.

In an attempt to balance the employees' Section 7 rights to communication with the legitimate interests of employers, this decision only applies to workers who have already been given access to their employers' email systems; employers are not required to provide access to employees. Businesses may also be able to justify a complete ban on non-work use of email if they can point to special circumstances that make such a prohibition necessary to maintain production or discipline. It will be the employer's burden to show what the interest at issue is and demonstrate how that interest supports any email use restrictions the company has implemented. The decision did not address email access by non-employees or any other type of electronic communication systems.

Employers should review their computer use and e-mail policies in light of this decision. Employers should determine which employees should or need to have access to their computer and e-mail systems and whether there is any business justification to impose a complete ban on non-work use of email.

EMPLOYMENT LAWSCENE ALERT: 2014 COULD STILL DELIVER IMPORTANT DECISIONS FROM THE NLRB

Although we previously posted an article outlining that the mid-term elections could improve the landscape for employers regarding administrative agency enforcement, including the National Labor Relations Board (“NLRB”), employers may still see a significant pro-union push from the NLRB before the end of 2014.

Democratic-appointee Nancy Schiffer’s term on the NLRB ends December 16, 2014. The Obama Administration has nominated Senate Health Education and Pensions Committee chief labor counsel Lauren McFerran to take Schiffer’s place on the five-member board. However, the now Republican-controlled Senate must approve all NLRB nominations. If the Senate does not confirm McFerran, or any other proposed nominee, the NLRB could be locked in a 2-2 partisan stalemate. Therefore, many believe that the currently Democratic NLRB will try to get major changes pushed through while they are still in the majority. This could include changes to union election procedures and changes to the definition of joint-employer status.

The NLRB has proposed rule changes that would significantly change the union election process. If issued, they would shorten the period between filing of an election petition and the election itself to only seven days. If this happens, employers will have less time to inform workers of the pros and cons of unionizing. Among other changes, the new rules would also require employers to submit a “statement of position” on the election petition by the time the pre-election hearing is held and waive any issues not raised in the statement.

Also, the NLRB could expand the standard for determining joint employer status in the Browning-Ferris case. A decision from the Board on this important topic is expected soon. For the past thirty years, the NLRB has analyzed whether two or more companies are joint employers under a “degree of control” test. The Board, in its expected decision in Browning-Ferris, could change that standard to a “totality of the circumstances” standard. A broader standard from the Board in finding joint employer liability would be expected given the NLRB’s General Counsel recent decision to permit 43 unfair labor practice charges against McDonald’s, USA, LLC to move forward under a “joint employer” theory finding that McDonald’s should be held liable, along with its independently-owned franchisees, based upon allegations that the franchisees violated workers’ rights in responding to workplace protests. If the NLRB expands the definition of “joint employer,” as expected, more companies that do not use direct employees could potentially face unfair labor practice charges for the conduct of other companies or could even be required to recognize and bargain with unions.

Employers should monitor the NLRB's decisions and actions through the end of the year and look for rulings that could impact them and their employees.

EMPLOYMENT LAWSCENE ALERT: WHAT THE MIDTERM ELECTION RESULTS MEAN FOR LABOR AND EMPLOYMENT LAW

In the midterm elections on Tuesday, November 4, 2014, the Republican Party gained a majority in the U.S. Senate. Now with control of both the House and the Senate, it is likely that the GOP will introduce legislation in an attempt to stop many of the current administration's employment agendas. Although President Obama maintains veto power, the Republican Party could curtail certain efforts that are currently being made.

Areas for employers to watch for potential changes include the NLRB and other federal administrative agencies. As this blog has covered recently, the NLRB has been aggressive in its enforcement of the National Labor Relations Act, and the penalties for violators have been stiff. There is currently proposed legislation to alter the composition of the NLRB from five members to six, three being from each major political party.

Increased congressional hearings that will scrutinize the Obama administration's labor and employment agenda are also likely. A target of these hearings may be the EEOC, which has also been pursuing an aggressive agenda of discrimination cases that some consider to be an attempt to expand the reach of Title VII.

Control by the Republicans of both the House and Senate could lead to budget cuts for federal agencies that enforce labor and employment laws as well. While this would not change the laws themselves, it would restrict the agencies' ability to enforce them.

Republicans will also have the ability to block or hold up nominations for various posts in the administration related to labor and employment law. There is speculation that Secretary of Labor Thomas Perez could be nominated to take over for U.S. Attorney General Eric Holder when he resigns. If that happens, the Republicans will have a larger, and likely more employer-friendly, say in who takes over as Secretary of Labor.

EMPLOYMENT LAWSCENE ALERT: NLRB DECISION INCREASES EMPLOYER RISK IN UNFAIR LABOR PRACTICE LITIGATION

In a move that could significantly increase the risk associated with unfair labor practice litigation for employers, the National Labor Relations Board ("NLRB") issued a decision on October 24, 2014 that stated it has authority to order expanded remedies for violations of the National Labor Relations Act ("NLRA") that are "egregious and pervasive."

In HTH Corporation, 361 NLRB No. 65 (2014), the NLRB recognized violations by a Hawaii hotel chain for repeated violations of the NLRA, including unlawfully terminating an employee for engaging in protected activity, eliminating contributions to unionized employees' retirement plans, maintaining an unlawful anti-solicitation policy, bargaining in bad faith, and failing to comply with NLRB orders.

The NLRB ordered, among various other remedies, the employer to reimburse both the NLRB General Counsel and the union for several years of litigation expenses, including counsel fees, salaries, witness fees, transcript and record costs, printing costs, travel expenses, per diems, and other reasonable expenses. In addition to expenses, the employer must comply with increased posting requirements. Typically, employers who are found in violation of the NLRA must post, for 60 days, a notice informing employees of their rights under the NLRA and a statement that the employer will not violate those rights. In HTH, because of the egregious and pervasive conduct, the NLRB required the employer to post the standard notice and an Explanation of Rights, outlining employees' core rights under the NLRA and giving specific examples of violations, for three years. In addition, the company will be required to give all new hires in that three year period copies of the notice and the Explanation of Rights. The NLRB is also requiring the company to publish the notice and the Explanation of Rights in two local publications twice a week for eight weeks.

And, although the NLRB did not exercise its right to do so in this particular case, it did note that front pay is an available remedy under the NLRA as part of a make-whole remedy. Front pay is money awarded for lost compensation during the period between judgment and reinstatement or in lieu of reinstatement. The NLRB did not specify how front pay would be calculated in the event that reinstatement was not awarded and left that question for a later decision.

This decision underscores the NLRB's recent aggressive enforcement agenda and the NLRB's willingness to deal the unions a winning hand in unfair labor litigation. The NLRB is active in enforcing the NLRA and will continue to use its broad discretionary powers to do so. This decision is likely to increase unfair labor practice charges being filed, as now unions have additional incentive to pursue such claims because they can recover their costs, and employers will be pressured to settle such charges to avoid the risk of liability for the union's costs and fees.

EMPLOYMENT LAWSCENE ALERT: NLRB'S GENERAL COUNSEL DETERMINES THAT MCDONALD'S IS A JOINT EMPLOYER WITH ITS FRANCHISEES

In a decision that could have far reaching implications for industries that rely on the franchisor/franchisee business model, the NLRB's General Counsel, Richard Griffin, Jr., determined that 43 unfair labor practices charges against McDonald's, USA, LLC may move forward under a "joint employer" theory finding that McDonald's should be held liable along with its independently owned franchisees based upon allegations that the franchisees violated worker's rights in responding to workplace protests. The NLRB General Counsel's decision to move forward against McDonald's not only attempts to extend liability under the National Labor Relations Act to franchisors for acts of its franchisees, but it may also open the door for unions to more easily organize multiple independently owned franchise locations operating under agreement with a single franchisor.

The "joint employer" theory is a legal concept that treats two allegedly separate employers as one. The "joint employer" theory does not depend upon the existence of a single integrated enterprise, but, rather, assumes in the first instance that companies are "what they appear to be" – independent legal entities that have merely chosen to handle jointly… important aspects of their employer-employee relationship. Typically, a joint employer relationship is found between two companies where the non-employing company actively and significantly exerts control over the same employees on those matters governing the essential terms and conditions of employment such as hiring, firing, discipline, supervisions, and direction.

The NLRB General Counsel's decision to target McDonald's as a joint employer comes in unison with big labor's recent efforts to protest wage and benefits levels for fast food workers. These recent protests over wages and benefits is big labor's attempt to attack the franchisor/franchisee business model by deeming independently owned stores to have the deep pockets of its franchisors – ignoring the economic realities of the franchisor/franchisee business model. For example, the SEIU has staged protests at different fast food establishments across the country demanding wages as high as $15/hour for all fast food workers based upon the fallacy that that such wages are appropriate given the corporate franchisor's finances. Wage demands of this type ignores the economics of operating an independent and locally-owned franchise where wages and benefits are often set based upon local market conditions as well as a franchisee's own profit and loss rather than upon the finances of its franchisor.

The NLRB General Counsel's decision to move forward with complaints that attempts to now treat McDonald's as a joint employer with its franchisees provides ammunition to big labor to further its war over wages and benefits against fast food franchisees by blurring the line between a small independently and locally-operated franchisee and its affiliated large corporate franchisor. In addition, with the NLRB willing to make clear that a corporate franchisor can now be held liable for unfair labor practices as a joint employer with its franchisees, it is only logical that the NLRB's next step will be to permit unions to organize fast food establishments based upon petitioned collective bargaining units that consist of multiple franchisee locations of a single franchisor even though the locations are independently owned and operated by different independent owners.

The NLRB General Counsel's decision to treat McDonald's as a joint employer does not currently have the effect of law. Once the NLRB issues the complaints, these cases will have to proceed through the adjudicative process leading up to a hearing before an administrative law judge before the cases might reach the full National Labor Relations Board for a decision.

Given the political make-up of current NLRB members, political ideologies will definitely pave the way for the NLRB's General Counsel's viewpoint on joint employer liability to prevail against McDonald's before the NLRB despite three decades of legal precedent that would hold otherwise. Needless to say, the battle will not end at the NLRB, as it would be expected that this issue will most likely wind-up before the U.S. Supreme Court who will make the ultimate decision on this important issue.

At this point, the NLRB will try to achieve settlement with McDonald's before proceeding to hearing with these cases. It would be expected that McDonald's will oppose any attempts to settle these cases and try to move these cases beyond the NLRB and into the courts where strong legal precedent has mostly rejected the joint employer theory for businesses set up under the franchisor/franchisee business model. It is in the federal court system where McDonald's has the best opportunity to defeat the NLRB's new approach against the fast food and other industries that rely on the franchisor/franchisee business model.

We will keep you informed of these cases before the NLRB as they develop.

EMPLOYMENT LAWSCENE ALERT: U.S. SUPREME COURT UNANIMOUSLY REJECTS PRESIDENT'S NLRB APPOINTMENTS

Earlier this year, we alerted employers when the U.S. Supreme Court heard oral arguments in *National Labor Relations Board v. Noel Canning*, a case involving the President's appointment of three members to the National Labor Relations Board ("NLRB") without U.S. Senate approval while the U.S. Senate was on break.

Today, Thursday, June 26, 2014, the U.S. Supreme Court unanimously held that the President exceeded his authority in appointing those three members to the NLRB while the U.S. Senate was on an extended holiday break. Although the Supreme Court ultimately found that the President does indeed have the power under the U.S. Constitution to make "recess appointments" during breaks *between formal sessions* of the Senate and also during breaks in *the midst of a formal session*, the Senate breaks during which the President made his appointments to the NLRB were not considered to be in a formal "recess" within the meaning of the Constitution.

The Supreme Court's decision in *Noel Canning* opens the door for both employers and unions to call into question hundreds of decisions issued by the NLRB in recent years. This could force the NLRB to revisit certain of its decisions and may force the Board to issue new decisions in those matters. We will continue to keep you informed of the latest developments and effects of the Supreme Court's decision in *Noel Canning*.

EMPLOYMENT LAWSCENE ALERT: WILL EMPLOYEES SOON BE PERMITTED TO USE COMPANY E-MAIL FOR UNION ORGANIZING ACTIVITIES?

Recent activity by the National Labor Relations Board ("NLRB") suggests that the Board may overturn a 2007 landmark decision in which it held that employees have no statutory right to use their employers' electronic communications systems for non-business purposes, including union organization and other concerted activities for the purpose of collective bargaining or other mutual aid or protection (also known as "Section 7 rights"). *See* 29 U.S.C. § 157. The Board's 2007 landmark decision is known as the "*Register Guard* decision".

On April 30, 2014, the NLRB issued a Notice and Invitation to File Briefs in the matter of *Purple Communications, Inc.*, inviting parties and other interested individuals and organizations to answer the question of whether the Board should reconsider or overrule its 2007 decision in *Register Guard*. The NLRB invites briefing and evidence to address the following questions:

- Should the Board reconsider its conclusion in *Register Guard* that employees do not have a statutory right to use their employer's email system or other electronic communications systems for Section 7 activity?
- If the Board overrules *Register Guard*, what standards, restrictions, and factors should be applied to employee access to employers' electronic communications systems?
- To what extent and how should the impact on the employer affect the issue?
- Do employees' personal electronic devices, social media accounts, and/or personal email accounts affect the proper balance to be struck between employers' rights and employees' rights under the NLRA to communicate about work-related matters?
- Are there any other technological issues regarding email or other electronic communications systems or any relevant technological changes that have occurred since the Board's 2007 *Register Guard* decision that should be taken into account?

If the NLRB overrules its *Register Guard* decision, employees may be permitted to use employers' email and communications systems for Section 7 activity, including union organizing activities.

Employers should pay close attention to the Board's decision in *Purple Communications, Inc.*, as it could have a significant impact on employers' policies and practices regarding employees' personal use of company communications systems. We will keep you informed when the Board issues its decision.