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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.