

NLRB Overrules Purple Communications Allowing Employers to Prohibit Employees From Using Work Email for Union Business

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In 2014, the National Labor Relations Board (“NLRB” or the “Board”) in *Purple Communications*, 361 NLRB 1050 (2014), issued a highly controversial decision that opened the door for employees to use their work email for union business. *Purple Communications* held that employer rules blocking employees from using company email for union activity were presumptively invalid. On December 17, 2019, however, the NLRB reversed course and, in a 3-1 decision, ruled in *Caesars Entertainment Corp.*, 368 NLRB No. 143 (2019), that prohibiting employee use of employer equipment, including email and IT resources, does not run afoul of employees’ rights under Section 7 of the National Labor Relations Act (“NLRA”), stating that employees “have no statutory right to use employer equipment, including IT resources, for [NLRA] Section 7 purposes.”

Purple Communications has been on the NLRB’s radar for two years, with NLRB General Counsel Peter Robb identifying it in Memorandum GC 18-02 in December of 2017 as a potential target for the Board (see prior alert [here](#)) and the Board inviting briefs regarding whether it should overturn *Purple Communications* in August 2018 (see prior alert [here](#)).

In *Purple Communications*, the board found that employees could generally use their employers’ email systems to organize or engage in other concerted activities protected by Section 7 of the NLRA, overturning a 2007 ruling, *Register Guard*, 351 NLRB 1110 (2007). In *Purple Communications*, the NLRB found that email is the new natural gathering place or “water cooler” where employees can congregate to talk about terms and conditions of employment, justifying its decision to expand the use of employer email systems beyond work-related purposes. Despite this expansion of employer email to non-work functions, the Board in *Purple Communications* still allowed an employer to justify a complete ban on non-work use of email if it can point to “special circumstances” that make such a prohibition necessary. However, it failed to define or elaborate upon the “special circumstances” that would justify such a ban and acknowledged that such circumstances would be rare.

In *Caesars*, the NLRB finally had an opportunity to revisit *Purple Communications*. In *Caesars*, the union filed an unfair labor practice charge accusing Caesars of illegally restricting workers’ computer use, including for email, by banning its use for nonbusiness purposes. In addition to arguments by Caesars and General Counsel for the NLRB, multiple amicus briefs were filed in favor of overturning *Purple Communications*. Among other things, the briefs argued that *Purple Communications* attached too little weight to employer property interests in protecting and controlling its internal email systems, and that enforcing restrictions on non-work email during working time, while technically permissible under *Purple Communications*, is unworkable in practice.

Ultimately, the Board sided with management, overturned *Purple Communications*, and held that “an employer does not violate the [National Labor Relations] Act by restricting the nonbusiness use of its IT resources absent proof that employees would otherwise be deprived of any reasonable means of communicating with each other, or proof of discrimination.” In doing so, the Board reinstated *Register Guard*, which held that policies against using work email for company business were unlawful if they treated unions differently than similar outside organizations. However, the *Caesars* decision added an exception to *Register Guard* permitting workers to use company email when it is “the only reasonable means for employees to communicate with one another.”

The Board’s decision in *Caesars* is an important win for employers. To take full advantage of the ruling, employers should consider dusting off their pre-2014 workplace email policies to limit employees’ use of that email to business purposes only.

For more information on this topic, contact a member of the firm's [Labor & Employment Practice Group](#).

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