

Employee Use of Company Email Systems

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Many employers have policies that prohibit employees from using the company email system for personal emails. The theory is that the email system is set up and paid for by the company in order to facilitate company business, and is not for the personal use of employees. Additionally, by banning personal emails, the employer may be attempting to reduce the chances of inappropriate emails being sent to or from company email addresses and the embarrassment and possible legal liability that can flow from the same.

However, the National Labor Relations Board has recently ruled that employees have a **presumptive right** to use their employer's email system to engage in communications relating to concerted activity protected by Section 7 of the National Labor Relations Act ("NLRA"), including union organizing, during nonworking time.

Though meant to protect possible union organizing activities, this is actually a wide-ranging decision. It means that any policy that restricts the use of a company's email system to company business only on its face violates the NLRA. The policy need not be directed to union organizing, and the employee's need not ever try to use the email system for union organizing. The very existence of a policy that restricts the use of the company email system to work emails only violates the NLRA.

Employer's may still have policies relating to email communications, such as no pornography, inappropriate jokes, large attachments, etc., so long as those are applied consistently. And it may have a policy limiting the use of the email during working hours to company business (but probably not when employees are on approved break time).

Employers should therefore review their handbooks and policies to see if there is any language in them that may violate this NLRB decision. If there is, employer's need to take action to amend those policies so that they are no longer in violation and do not risk adverse legal action by the government.

If you would like me to review your policies to ensure that you are compliant, or want me to draft a compliant policy for you, please do not hesitate to contact Scott Leah.