



# MANCHEL BRENNAN

COUNSELLORS AT LAW

## CLIENT ALERT (JANUARY, 2015)

### **NEW RULING MEANS EMPLOYERS MUST UPDATE THEIR EMAIL POLICIES**

In December of 2014, the National Labor Relations Board issued a ruling in the case Purple Communications, Inc. and Communications Workers of America, AFL-CIO, which has significant implications for employers' email and non-solicitation policies. **The ruling applies to all employers, not just those with a unionized workforce.**

In sum, the NLRB held that an employer which provides email access to employees to perform their job must allow those employees to use their email access to communicate regarding "protected activities" during nonworking time. Protected activities include attempting to organize employees to be represented by a union and discussing the terms and conditions of employment (such as wages, benefits, work conditions, etc.).

Some important points of the ruling include:

- With only a limited exception (described below), employers must allow employees who have access to the employer's email system to use such email access during nonworking time to engage in protected activities.
- An employer may justify a total ban on nonwork use of the employer's email system only if the employer can show that such a ban is necessary to maintain production and discipline (the ruling notes that employers will be held to a high threshold to meet this burden, such as showing that allowing nonwork use of the email system during nonworking time will damage or overload the system).
- Employers are not required to provide employees access to the employer's email system.
- Employers are not required to provide third parties (such as a union attempting to organize employees) access to their email systems.

- The ruling is specifically limited to email communications, but indicates that "other interactive communications, like instant messaging or texting, may ultimately be subject to a similar analysis," and is also limited to nonworking time.

Although the employer in this case may appeal, this ruling signals the NLRB's position regarding email communications policies and affects all employers, regardless of size or unionized status. Employers should review their policies now, including electronic communications policies and non-solicitation policies, to determine whether revisions need to be made in order to comply with this ruling.

### **NEW HAMPSHIRE LAW ALLOWS EMPLOYEES TO DISCUSS WAGES AND BENEFITS AND ADDS NEW MANDATORY POSTING REQUIREMENT**

A New Hampshire law, which became effective January 1, 2015, provides employees the right to disclose their wages, salary and benefits to others and prohibits employers from taking any adverse action as a result of such disclosures. The law recognizes an exception for employees who have access to the wage information of other employees as a part of their job functions (such as employees in the Human Resources or payroll departments). Employers with employees in New Hampshire should carefully review and revise their policies to ensure that employees are not prohibited from disclosing or discussing their compensation or benefits, and should educate managers and supervisors that they may not take any adverse action against employees for disclosing or discussing their compensation or benefits.

The law also requires employers to post a notice of employee rights. The new notice can be downloaded from the New Hampshire Department of Labor's website: <http://www.nh.gov/labor/documents/equal-pay-poster.pdf>

If you have any questions about these issues, or would like assistance in reviewing and editing your existing policies and procedures, please feel free to contact us.

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