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Labor Law Bulletin

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NLRB Issues Decision on E-mail Solicitation

The National Labor Relations Board has issued a much-anticipated decision giving employers substantial control over their e-mail systems. In *The Register Guard*, 351 NLRB No. 70 (Dec. 16, 2007), the Board held that employees do not have broad rights to use such systems to organize or advocate union causes.

In *Register-Guard*, the employer's policy prohibited employees from using its e-mail system "to solicit or proselytize for commercial ventures, religious or political causes, outside organizations, or other non-job-related solicitations." As a practical matter, the employer allowed employees to send and receive personal e-mail messages, such as baby announcements, party invitations, requests for sports tickets, and the like. The case arose after the employer disciplined an employee for e-mailing other employees at work regarding a union rally and the union's request for a show of support.

In a 3–2 decision that split along partisan lines, the NLRB rejected arguments that e-mail systems should always be recognized as a protected forum for discussing union-related issues. The majority opinion ruled instead that management control of employer equipment such as bulletin boards, telephones, and e-mail prevails over an employee's Section 7 right to solicit for a union. Acknowledging that e-mail has had a significant impact on how employees communicate, the majority noted that employees still have more traditional means of communicating about union issues that are protected by labor law, such as talking during lunch and breaks and distributing written material on nonwork time and in nonwork areas.

Register Guard reflects a practical view of e-mail communications in the workplace. In previous cases, the Board had ruled that a policy forbidding union solicitation while allowing almost any other type of non-work-related e-mail, personal or organizational, violated the Act. Now, an employer will violate the Act only by treating *similar* communications differently. For instance, under the new rule, an employer may allow personal e-mail and invitations while banning e-mail solicitations and invitations for outside organizations, including unions. However, as in the past, an employer may not ban e-mail union solicitations while permitting such solicitations for other organizations.

The new standard will allow management to adopt and enforce realistic e-mail rules without giving up its right to forbid solicitations made on behalf of unions. Employers should review their existing e-mail and other nonsolicitation policies to make certain the policies take advantage of this favorable change in the law.

If you would like more information on the *Register Guard* decision or assistance in preparing or revising your workplace communications policies, please contact Kevin Hennessy, (312-609-7868), Ken Sparks (312-609-7877), Mark Stolzenburg (312-609-7512), or any other Vedder Price attorney with whom you have worked.

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