Purple Communications, Inc. Overruled: Employees have no presumptive statutory right to use employer equipment

December 18, 2019

By: Melanie Lipomanis

Employment Law Update - December 18, 2019

Authored by: Melanie Lipomanis

The National Labor Relations Board issued a decision yesterday in *Caesars Entertainment d/b/a/ Rio All-Suites Hotel and Casino*, 368 NLRB No. 143 (December 17, 2019), overruling past precedent that required employers to permit employee use of its email and other information technology systems for non-work related purposes.

In a 2014 decision, *Purple Communications, Inc.*, 361 NLRB 1050 (2014), the Board announced that employees who were granted access to their employer's email or other electronic communication systems for use in the performance of their job duties, also have a presumptive right to use the employer's email during non-working hours to engage in non-work related communications. There, the Board found that employees must be permitted to use their employers' equipment, including email systems, to organize or engage in other concerted activities protected by Section 7 of the National Labor Relations Act. Section 7 of the Act guarantees employees "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." Since Purple Communications, the Board has interpreted the Act broadly to include employees' use of their employer's communication systems to address the terms and conditions of their employment as activity also protected by the Act.

Yesterday in Caesars Entertainment, the Board essentially reinstated a prior holding in Register Guard, 351 NLRB 1110 (2007), which found employers have a property right to control the use of workplace communication systems, including email systems. Recognizing we live in an increasingly tech-savvy society, the Board observed in its *Caesars Entertainment* decision that in "modern workplaces employees also have access to smartphones, personal email accounts, and social media, which provide additional avenues of communication, including for Section 7–related purposes." Accordingly, the Board found "there is no basis for concluding that a prohibition on the use of an employer's email system for non-work purposes in the typical work-place creates an "unreasonable impediment to the exercise of the right to self-organization." *The Board* included in its holding, however, a narrow exception permitting employee-use of company email when it is "the only reasonable means for employees to communicate with one another."

The *Caesars Entertainment* decision can be found here.