

Legal Minute

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HAPPY HOLIDAYS FROM THE NLRB

1. On December 17, 2019, the National Labor Relations Board (NLRB) **restored** to employers **the right to restrict employees from using company email systems for nonbusiness purposes**. The decision, issued in *Caesars Entertainment Corp.*, reverses the NLRB's 2014 ruling in *Purple Communications*, which held that workplace rules prohibiting employee email use for union activity were presumptively invalid under Section 7 of the National Labor Relations Act (Section 7). Because **Section 7 applies to all employers**, not just unionized ones, this NLRB ruling affects almost every U.S. employer that provides a corporate email system. However, the decision does allow employees to use company email when it is "the only reasonable means for employees to communicate with one another."
2. In *Apogee Retail LLC d/b/a Unique Thrift Store*, 368 NLRB No. 144 (2019), the NLRB **restored** to employers the right to implement and enforce confidentiality rules during investigations of workplace misconduct, overturning a prior decision holding that blanket rules requiring confidentiality during open investigations are presumptively lawful. Under the old rule, an employer was required to show, on a case-by-case basis, that the need for confidentiality outweighed its employees' Section 7 rights to discuss the terms and conditions of employment. **Under the current law**, a rule requiring confidentiality—**if limited to the duration of a workplace investigation**—is properly categorized as a "Category 1" rule and is **presumptively lawful**. However, if the confidentiality rule is not limited to the duration of the investigation, it is considered a "Category 2" rule, which requires case-by-case analysis of the impact of the rule on employees' Section 7 rights. ***Easy take away here: limit any rules regarding confidentiality to the duration of the investigation.***

To learn what "Section 7" rights are, visit this link: <https://www.nlr.gov/rights-we-protect/whats-law/employers/interfering-employee-rights-section-7-8a1>

NEW FEDERAL "FAIR CHANCE ACT" APPLIES TO FEDERAL CONTRACTORS

Signed by President Trump on December 20, 2019, federal contractors that have openings for positions within the scope of federal contracts are prohibited from inquiring about or seeking criminal history information from an applicant until after a conditional job offer has been extended. There are exceptions for law enforcement positions, or positions that require a contractor to obtain criminal history information prior to extending a conditional job offer, among other exceptions. Additional regulations will be passed, so if you have a federal contract, be sure to monitor.

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