Northwest Ohio Human Resource Association

AFFILIATE OF SHRM SOCIETY FOR HUMAN RESOURCE MANAGEMENT

LEGISLATIVE UPDATE

January 2015

NLRB hits delete on employer email rules

On December 11, 2014, the National Labor Relations Board issued a ruling in *Purple Communications, Inc.*, 361 NLRB 126, which overruled prior Board precedent on allowable limitations on employee use of employer provided email systems.

Purple Communications provides employees unlimited access to its email system, including via smart phone and home computers. However, the employer maintained a written work rule prohibiting employees from using its email for personal purposes. After an unsuccessful organizing campaign, the AFL-CIO filed objections with the Board alleging that the employer's email policies interfered with employees' rights to discuss wages, hours, and terms and conditions of their employment.

Agreeing with the Union, the Board expressly overturned prior precedent, *Register Guard*, 351 NLRB 1110 (2007), which had permitted a non-union employer to place substantially similar restrictions on employer-provided email. In the *Purple* holding, the Board recognized email usage had increased exponentially in the seven years since its prior ruling, becoming the preferred method of communication between employees on these protected issues. The effect of this holding reaches both union and non-union workplaces, alike.

How *Purple Communications* changes the rules:

Absent special circumstances, employers may not prohibit employees from using their email systems to discuss protected issues, including wages, hours, and terms and conditions of employment, during non-work hours. The ruling treats email systems as virtual meeting places, instead of merely "equipment" such as faxes, bulletin boards, and the like, with limited capacity for simultaneous business and personal use.

How things stay the same:

Employers who do not already offer some or all of their employees access to an email system are not obligated to do so. Moreover, employers may still utilize and enforce, within certain limitations, work rules that limit use of their email systems during work hours. Finally, *Purple Communication* does not alter or limit an employer's right to monitor incoming and outgoing emails from its own system — i.e., employees have no right to privacy on employer-provided email systems.

The full opinion is available here:
mynlrb.nlrb.gov/link/document.aspx/ 09031d45819e22c9

"[E]mpirical evidence demonstrates the email has become such a significant conduit for employees' communications with one another that it is effectively a new 'natural gathering place' and a forum in which coworkers who 'share common interests' will 'seek to persuade fellow workers in matters ... related to their status as employees.'"

*- Purple Communications, Inc., 361 NLRB No. 126, at *13*

REMINDER:

Ohio's new minimum wage amounts went into effect January 1, 2015. Minimum wages in the state are now:

~~$7.95~~ **$8.10**
for non-tipped employees

~~$3.99~~ **$4.05**
for tipped employees

Supreme Court set to rule on Pregnancy Discrimination Act

In *Young v. United Parcel Service*, the U.S. Supreme Court is set rule on whether, and under what circumstances, an employer is required to offer light duty work to pregnant employees when an employer offers similar accommodations to non-pregnant employees who are "similar in their ability or inability to work."

In this case, Peggy Young was a delivery driver for UPS, an essential function of which required her to routinely lift packages of up to 70 pounds. When she became pregnant, and upon the recommendation of her doctor, Young requested a light duty assignment that require she not lift more than 20 pounds. At the time of the request, UPS only provided temporary reassignments, including light duty positions, to people injured on the job; when necessary as a reasonable accommodation under the ADA; and under the terms of their union contract, which provided for light duty to pregnant employees when required by state or federal law. Because none of these restrictions applied, UPS denied her request.

Federal law requires pregnant employees be treated comparable to other employees, but the main question to be answered by the Supreme Court is: Comparable to whom? Commentators have noted that in its most expansive interpretation, the Pregnancy Discrimination Act could be read to require that any accommodation offered to any employee, even if generally reserved for employees injured on the job, also must be offered to pregnant employees who request accommodation. At the other end of the spectrum, a conservative reading of the Act could merely require an employer's policy on accommodations to be neutral, and not discriminatory, toward pregnant employees. The lower courts that have looked at this issue, have sided with UPS and endorsed a more conservative read of the statute.

The Supreme Court heard oral arguments in this case on December 3rd, and a decision is anticipated in the next few months.

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Ohio Supreme Court affirms limiting employer intentional tort liability

On December 18, 2014, the Ohio Supreme Court issued a much awaited decision in *Pixley v. Pro-Pak Industries*, an intentional tort case. The Court held establishing an intentional tort requires evidence that the employer deliberately intended to cause harm to an employee. The court declined to address whether an equipment safety guard is limited to a device shielding only the operator from injury. The Court's decision is very important to Ohio employers and limits employer intentional tort liability under the statute. The full opinion may be viewed at: http://www.sconet.state.oh.us/rod/docs/pdf/0/2014/2014-ohio-5460.pdf