

PUBLICATION

The Union Wants to See Your Email Policy

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Two weeks ago, the federal appeals court responsible for reviewing nationwide decisions of the National Labor Relations Board (NLRB) rendered an important decision impacting union and non-union employers alike.

The U.S. Court of Appeals for the District of Columbia reversed an NLRB decision that allowed employers to prohibit union solicitation through emails. In *Guard Publishing Co. d/b/a The Register-Guard v. NLRB*, the Court found that an employer who disciplined an employee for email solicitations on behalf of a union committed an unfair labor practice under the National Labor Relations Act (NLRA). The Court reasoned that because the employer allowed emails relating to "parties, jokes, breaks, community events, sporting events, births, meetings for lunch, and poker games," employee discipline for union solicitation discriminated against union activity. The Court left the door open for employers to distinguish between personal email that does not solicit others – which it defined as a call for action – and organizational solicitations. However, the Court held that email non-solicitation policies must be enforced consistently if employers wish to prevent union-related email solicitations in the workplace.

What this means for employers:

- An employer whose non-solicitation policy is not uniformly applied to union and non-union solicitations is committing an unfair labor practice. This often arises in the context of company-sponsored charitable solicitations, as it did in the *Register Guard* case.
- Employers cannot wait for a union organization effort to emerge in their workplace before applying their neutral non-solicitation policies.
- Employers may be able to allow the personal use of email that does not solicit or call for any action without opening themselves up to union solicitations.
- Employer non-solicitation policies should be carefully crafted with legal assistance.

Baker Donelson stands ready to assist you with these and all other labor and employment-related challenges. For assistance, please contact your Baker Donelson attorney or any of our nearly 70 Labor & Employment attorneys in the Firm's Labor & Employment Department, located in *Birmingham, Alabama; Atlanta, Georgia; Baton Rouge, Mandeville and New Orleans, Louisiana; Jackson, Mississippi; and Chattanooga, Johnson City, Knoxville, Memphis and Nashville, Tennessee.*

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