

Don't Gamble With Your Email Policy

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In what is one of the National Labor Relations Board's (NLRB) first applications of the *Purple Communications* decision, NLRB administrative law judge (ALJ) Mara-Louise Anzalone has struck down an email policy at the Rio All-Suites Hotel in Las Vegas. The hotel's employee handbook contained a policy entitled "Use of Company Systems, Equipment, and Resources." It stated in relevant part: Computer resources may not be used to:

- Commit, aid or abet in the commission of a crime
- Violate local, state or federal laws
- Violate copyright and trade secret laws
- Share confidential information with the general public, including discussing the company, its financial results or prospects, or the performance or value of company stock by using an internet message board to post any message, in whole or in part, or by engaging in an internet or online chatroom
- Convey or display anything fraudulent, pornographic, abusive, profane, offensive, libelous or slanderous
- **Send chain letters or other forms of non-business information**
- Seek employment opportunities outside of the company
- Invade the privacy of or harass other people
- Solicit for personal gain or advancement of personal views
- Violate rules or policies of the company

Judge Anzalone focused on one line from the rules, the part that prohibits the use of the email system for "other forms of non-business information." That portion of the rule, she concluded, was invalid under *Purple Communications* and caused the entire rule to be invalid. In her opinion, she stated: "[T]o determine whether Respondent's rule violates the Board's new standard, I must decide whether it prohibits employees' nonbusiness use of its email system in a manner that is broad enough to encompass employees' use of the system for Section 7 activities during nonworking time. I find that, insofar as the rule bans all use of Respondent's email system for nonbusiness distribution and solicitation, it is squarely covered by the new presumption

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and violates the *Purple Communications* dictate that employee use of email for statutorily protected communications on nonworking time must presumptively be permitted by employers who have chosen to give employees access to their email.” The case is *Caesars Entertainment Corp. d/b/a Rio All-Suites Hotel and Casino and International Union of Painters and Allied trades, District Council 15, Local 159, AFL-CIO*, 28-CA-060841. A copy is available [here](#).