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NLRB—Much Ado About Work Rules and Social Media Policies

BY RONALD MEISBURG AND JON L. DUELTGEN

Much has been written about the social media and work rules decisions emanating from the National Labor Relations Board (NLRB). It seems that not a week goes by without at least one administrative law judge (ALJ) decision finding this rule or that policy unlawful. Is the explosion of decisions in this area the product of new law or a new emphasis on enforcing old law? In reality, these rulings began with the application of established law to new circumstances brought about by technological innovations and the resulting advent of social media. For years, it has been unlawful for an employer to maintain or enforce a work rule that explicitly restricts or otherwise interferes with employee conduct protected by Section 7 of the National Labor Relations Act (the Act).[1]

That law is now being enforced in instances where there is an application of work rules in the social media context, sometimes in the form of specific social media policies or in the application of work rules to social media activities. For example, in a recent board decision, an employee's ''liking'' of a post on Facebook was deemed to be protected concerted activity with the original poster, since that post complained about the employer's purported mishandling of tax paperwork.[2] An otherwise insignificant ''like'' can offer an employee protection under the Act, even in a non-union context.

These cases have become an enforcement priority in the Office of the General Counsel of the NLRB, and the volume of such cases has risen greatly. With this increase has come a range of prosecutorial and litigation decisions involving work rules generally and alleging that heretofore commonplace and common sense rules illegally interfere with Section 7 protected conduct. This in turn has made legal compliance by employers more complicated as the general counsel, the ALJs and eventually the board each weigh in with interpretations of the law in this area.

The Established Law

The NLRB has for years entertained cases involving claims that certain work rules violate the Act.[3] In 2004, the board developed the current test that is applied.[4] In *Lutheran Heritage Village-Livonia*, the NLRB set forth a two-step approach to determine whether an employ-

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[1] Under Section 7 of the Act, ''Employees shall have 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, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).'' 29 U.S.C. § 157.

[2] *See Triple Play Sports Bar & Grille*, 361 N.L.R.B. No. 31 at *2 (Aug. 22, 2014) (In a heated discussion on Facebook, an employee ''liked'' another employee's post, which stated: ''They [the employer] can't even do the tax paperwork correctly!!!! Now I OWE money . . . Wtf!!!!'') (13 PVLR 1507, 9/1/14).

[3] *See, e.g.*, *Republic Aviation Corp. v. NLRB*, 324 U.S. 793 (1945) (finding a ''no solicitation'' rule to have violated the Act); *Lafayette Park Hotel*, 326 N.L.R.B. 824, 825 (1998), *enforced*, 203 F.3d 52 (D.C. Cir. 1999) (''the appropriate inquiry is whether the rules would reasonably tend to chill employees in the exercise of their Section 7 rights'').

[4] *Lutheran Heritage Village-Livonia*, 343 N.L.R.B. 646 (2004).

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er's work rule violates the Act. First, if the rule explicitly restricts protected activity, it is unlawful. But second, even if a work rule does not explicitly restrict protected activity, a work rule may still violate the Act where (1) employees would reasonably construe the language to prohibit Section 7 activity; (2) the rule was promulgated in response to union activity; or (3) the rule has been applied to restrict the exercise of Section 7 rights.

The first step of the *Lutheran Village* test is straightforward: Does the rule explicitly ban conduct that is protected by Section 7? A good example of a rule that does is one against discussing wages with fellow employees or third parties. Employees have a right to do this, and rules against such discussions are facially unlawful under the Act. It is important to note that enforcement of such a rule is not a necessary element of a violation—*mere maintenance* of such a rule is unlawful. Of course, enforcement of it would also violate the Act.

Cases involving the other steps in the *Lutheran Village* test can present varying degrees of difficulty. For example, in general, whether a facially valid rule has been applied to restrict Section 7 activity creates additional difficulty because there may be factual disputes and the shifting burdens of persuasion in so-called ''mixed motive'' cases. Typical of such cases is *DirecTV*, where the employer's policy against solicitation and distribution of literature was ''facially valid,'' but the ALJ found that it was unlawfully enforced because it was applied in a fashion that precluded employee discussion of the union during work time.[5] Similarly, in *Wal-Mart Stores*, an employer could not lawfully apply its facially valid no-solicitation rule to prohibit an employee from wearing a pro-union T-shirt on its premises, absent a showing of special circumstances.[6] In sum, *Wal-Mart* and *DirecTV* provide examples of rules that are facially valid, but which were applied in a way that ran afoul of the Act.

The same types of factual issues can be presented with respect to whether a facially valid rule was adopted in response to Section 7 activity, although a violation under this theory relies on a temporal connection between the promulgation of a facially valid rule following, and allegedly in response to, employees engaging in protected activity. In *Boulder City Hospital*, an employer posted an anti-harassment memo after an episode of perceived harassment by employees involved in union solicitation activity.[7] Although the ALJ and the board dissent posited that the anti-harassment memo merely reiterated the employer's lawful anti-harassment policy, the board majority found that the promulgation of the memo came after the purported harassment, which was directly tied to union solicitation, and thus ''was a response to union activity in the sense that *Lutheran Village* contemplates.''[8]

But perhaps the most difficult aspect of the *Lutheran Village* test has turned out to be whether an employee could reasonably read a rule to restrict or ''chill'' Section 7 protected conduct. An example of such a rule is found in a case involving *Purple Communications*, where the employee handbook prohibited ''[c]ausing, creating, or participating in a disruption of any kind during working hours on Company property.''[9] Since the ''no-disruptions'' rule did not define or limit the meaning of ''disruption,'' or state that it is not intended to refer to Section 7 activity, the board endorsed the ALJ's reasoning that employees would reasonably interpret it to outlaw some variety of protected Section 7 activity.

Over time this test has proved difficult to apply in a uniform way that yields predictable results. And many—if not most—of the work rule/social media cases recently emanating from the board and its ALJs involve this issue. The test is proving to be vexing for two reasons. First, it requires the employer (and, by virtue of seeking compliance, the NLRB) to get into the head of an employee and determine how the employee would reasonably interpret the rule and whether that interpretation would cause the employee to modify or chill his or her conduct along Section 7 lines. Second, the test has resulted in both (i) the invalidation of many rules that heretofore were viewed as common sense, legitimate rules for running a business; and (ii) the apparent expansion of protected rights as rules are parsed to determine whether any aspect of protected activity, however attenuated, might be chilled.

Established Law, New Circumstances

There is no question that over the past four years, the NLRB general counsel has placed a priority on enforcing old law in a very vigorous manner in new cases involving social media rules and restrictions on social media use by employees. The seminal case was *American Medical Response* (*AMR*), where a Connecticut paramedic was discharged for certain highly critical and offensive remarks she made on her Facebook page about her employer and her supervisor.[10] The general counsel alleged a violation of the Act based on the dismissal of the paramedic because of violations of social media (''Blogging and Internet Posting Policy'') and work rules (''Standards of Conduct''). Specifically, the employee was alleged to have violated rules prohibiting:

- ''[P]osting pictures of themselves in any media, including but not limited to the Internet, which depicts the Company in any way, including but not limited to a Company uniform, corporate logo or an ambulance, unless the employee receives written approval from the EMSC Vice President of Corporate Communications in advance of the posting.''
- ''[D]isparaging, discriminatory or defamatory comments when discussing the Company or the Employee's superiors, coworkers and/or competitors.''
- ''Rude or discourteous behavior to a client or coworker.''

[5] *DirecTV, Inc.*, No. 20-CA-34858 (N.L.R.B. A.L.J. Aug. 5, 2010), *available at* http://mynlrb.nlrb.gov/link/document.aspx/09031d458038cf10.

[6] *In re Wal-Mart Stores, Inc.*, 340 N.L.R.B. 637, 639 (2003).

[7] *Boulder City Hosp., Inc.*, 355 N.L.R.B. 1247 (2010).

[8] *Id.* at 1247.

[9] *Purple Communications, Inc.*, 361 N.L.R.B. No. 43 (Sept. 24, 2014).

[10] *Am. Med. Response of Conn. Inc. v. Int'l Bhd of Teamsters Local 443*, N.L.R.B., No. 34-CA-12576 at *2 (2010) (referencing, for example, a choice word for a male anatomical feature) (10 PVLR 249, 2/14/11).

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- ''Use of language or action that is inappropriate in the workplace whether racial, sexual or of a general offensive nature.''[11]

The employee's union filed an unfair labor practice charge on her behalf, and a complaint was issued alleging that both the employer's maintenance of the rule and the firing of the employee pursuant to it were unlawful. The case settled before going to trial, but the die was cast for a whole new battlefield involving work rules generally and social media in particular.

Although there was nothing new about employees griping about their supervisors and managers, the *AMR* case was a bombshell at the time. Suddenly, employees who made highly critical, even scurrilous remarks on social media about their employer and their supervisors were deemed protected in doing so by the Act. The profile of the NLRB was raised overnight as news outlets publicized the story, pundits left and right weighed in on the legal theory and the agency was either praised as a vigorous enforcer of the law or vilified as overreaching and lacking common sense.

An apparent increase in work rules cases of all types followed in the wake of the agency's social media initiative. It has become routine in investigating unfair labor practice charges for the NLRB regions to review an employer's work rules, handbooks and social media policies. In numerous cases the basis for the initial charge was overtaken by claims of unlawful work rules, as charging parties were encouraged or at least allowed to amend their original charge to claim that the enforcement or maintenance of this or that work rule or policy violated the law. So, the current seemingly endless supply of cases involving such claims was a result of the application of established law to events driven by the new technology of social media, and a concomitant aggressive focus by the NLRB regions on purportedly unlawful social media and other work rules during the investigation of a case—even where the case may not have involved such a claim to begin with.

The Invalidation of Common Sense Rules

Currently before the board is a work rules case stemming from a waitress's complaint that she was terminated for complaining about an allegedly rigged bikini contest at the restaurant where she worked.[12] An ALJ ruled that an otherwise common sense rule, which prohibited ''[i]nsubordination to a manager or lack of respect and cooperation with fellow employees or guests,'' was unlawful because it was ''overbroad.''[13] The ALJ remarked that the lack of limiting language could have led employees to be chilled in the exercise of their Section 7 rights because the rule prohibited all disrespectful conduct towards others and, further, defining due respect in the context of a union activity was inherently subjective.[14] On the other hand, this rule seems to be both sensible and commonplace, particularly in the retail and hospitality industries, where employees are expected to abide by management's instructions and be cooperative with their managers and coworkers, in order to best serve the business's customers and guests.

In a recent example involving *Triple Play Sports Bar*, the board reversed an ALJ who upheld a simple Internet/blogging policy.[15] The policy stated that by ''engaging in inappropriate discussions about the company, management, and/or co-workers, the employee may be violating the law and is subject to disciplinary action, up to and including termination of employment.'' As the policy was lacking in illustrative examples, the board found that the policy's language forbidding ''inappropriate'' communications in the Internet/Blogging Policy was ''sufficiently imprecise'' as to be overly broad. Although the dissenting board member noted that regardless of the varying definitions of ''inappropriate,'' such discipline is conditioned on exchanges which are illegal, the majority opinion in *Triple Play Sports Bar* demonstrates how difficult it is to defend a rule where language is imprecise and could be applied to some type of protected activity, no matter how attenuated.

In *Kroger Co. of Michigan*, an ALJ found that prohibiting an employee's use of an employer's intellectual property without the employer's permission was an overbroad restriction.[16] The employer unsuccessfully relied on an NLRB advice memo, where the general counsel approved language requiring employees to ''[r]espect all copyright and other intellectual property laws,'' including the company's own copyrights, trademarks and brands.[17] The ALJ disagreed, however, because the policy in the advice memo was driven by compliance with intellectual property law generally, while the *Kroger* policy more narrowly focused on ''not using [employer's] logos, banners, etc., under any unapproved circumstances, many of which would not violate intellectual property law.''[18] This case serves as a good example of the frustrations felt by employers when dealing with the NLRB in this area. The employer understandably wants a rule that protects an undeniably important business interest such as intellectual property rights. Further, an employer wants to avoid confusion caused by the association of its trademarks with statements by third parties and the dilution of a trademark's value that may come with unauthorized use—concerns not addressed by the ALJ. But the board wants the employer to delve into the unknown and unknowable chilling effect the rule might have on the future actions of its employees, as well as predict the NLRB's view of that, in order to make lawful what otherwise appears to be a common sense rule protecting the employer's intellectual property.

Disagreements and Inconsistencies at the NLRB

One current but perhaps temporary trend is that in some instances, ALJs are disagreeing both with one another and with guidance issued by the NLRB Office of

[11] *Id.*

[12] *Hoot Winc, LLC*, N.L.R.B. A.L.J., No. 31-CA-104872 (May 19, 2014) (13 PVLR 973, 6/2/14).

[13] *Id.*

[14] *Id.* (citing *Univ. Med. Ctr.*, 335 N.L.R.B. 1318, 1322 (2001)).

[15] *Triple Play Sports Bar & Grille*, 361 N.L.R.B. at *7. This case is also discussed with respect to another issue in note 2, *supra*.

[16] *Kroger Co. of Mich.*, N.L.R.B. A.L.J., No. 07-CA-098566 (Apr. 22, 2014).

[17] *McKesson Corp.*, No. 06-CA-066504 (NLRB Advice Memo Mar. 1, 2012), *available at* http://mynlrb.nlrb.gov/link/document.aspx/09031d4580f79116.

[18] *Kroger*, at *13 n.4.

the General Counsel in determining what rules violate the law. For example, in *Professional Electrical Contractors of Connecticut*, an ALJ struck down a rule forbidding photographing, taping or recording of any person, document, conversation, communication or activity that in any way involves the company, its associates or customers or any other individual with which it is doing or intending to do business—including on the premises of the employer's clients.[19] Despite the employer's best intentions to protect customer privacy and confidentiality, the effect on the employees' protected rights was considered by the ALJ to be the determinative factor. Thus, the ALJ struck down the rule and said that such conduct could not be banned even on a customer's premises, unless the customer explicitly prohibited photographing, taping or recording on its premises. The shifting of the burden onto the employer to determine whether each and every customer permits or prohibits such conduct on its premises unnecessarily frustrates the employer's common sense attempt to protect its customers' privacy.

Further, this ruling is in apparent tension with a recent ALJ decision in *Whole Foods Market*, which found such a rule permissible where the employer forbade recording of conversations or the use of recording devices.[20] Until the board resolves this conflict, employers are left without firm guidance on the subject. The confusion resulting from such conflicts is exacerbated when the case involves the question of whether a certain rule chills protected conduct, because it introduces into the mix conflicting ALJ views of the general counsel's view of how an unknown employee might reasonably read a rule.

Some Suggested Modes of Analysis

To help clear up the confusion and inconsistencies in cases involving the validity of social media and work rules, we would respectfully ask the agency to consider ways to make the legal requirements more predictable, employer compliance with the board's policies more practicable and thereby promote adherence to the Act in a meaningful and productive way. Otherwise, as employers scramble to adjust their policies in light of every new legal development on social media and work rules, compliance efforts can prove futile while the board squanders resources with costly and inefficient enforcement actions. Such results do not serve the purposes and policies of the Act.

First, to the extent the board targets the *mere maintenance* of policies perceived to possibly chill employees' exercise of Section 7 rights, it should adhere to the rules of construction it has set for itself, namely, (i) to not read words and phrases in a rule in isolation, but in context; and (ii) to not find a violation simply because a rule could possibly be read to interfere with protected conduct, but because it reasonably would be read to do so. The agency should also recognize that certain types of rules, such as those requiring respectful conduct in the workplace, are simply not inimical to engaging in protected activity. Further, the board should give more consideration to the adverse impact statements on social media may have on the legitimate business interests of the employer. Finally, the board should understand that all rules are not equal and, with respect to the maintenance of highly important employer rules involving matters such as the protection of intellectual property and other proprietary business information, set a higher bar before such rules will be deemed to chill or interfere with protected conduct.

The board can lend credibility to its prosecution and advancement of the Act by returning to its policy of focusing on ''context'' and consequently how ''reasonably'' is interpreted. In *Lutheran Village*, the board stated that ''in determining whether a challenged rule is unlawful, the board must, however, give the rule a reasonable reading. It must refrain from reading particular phrases in isolation, and it must not presume improper interference with employee rights.''[21] That is to say, a reasonable reading of a rule does not create a presumption of improper interference with employee rights or that it could ''possibly'' be read to chill the exercise of such rights, but rather, should weigh what *actual interference* with employees' rights might reasonably result from such a rule. In sum, rather than asking whether a reasonable employee *could* be chilled by a work rule, the question should be posed as whether a reasonable employee *would* be chilled by a work rule. After all, what is possible is not necessarily reasonable, and conflation of such terms results in decisions that sometimes appear to defy common sense and make employer compliance difficult.

It is also worth bearing in mind that existing board law was not developed with social media in mind. Social media conversations are not the equivalent of the proverbial office water cooler conversations, which remain the archetypical basis of the board law protecting employee's rights, including concerted activities. Rather, an analogy should be made to the common law distinction found in slander and libel cases, where it is recognized that greater harm may be done by libel because, like social media postings, it is easily reproducible and widely distributable.[22] Whereas slander requires word-of-mouth re-transmission, libel can be reprinted and disseminated to a much wider audience almost immediately in a far more permanent form, especially in the social media context where it can almost instantaneously be re-posted, re-tweeted and forever preserved on the Internet for the public-at-large to access. Just as there is a common law distinction between these different mediums of communication, the board should consider whether a similar distinction is warranted here in the social media sphere, given how easily information flows, and whether because of that, the board should recognize that communications normally protected around the water cooler may not receive the same degree of protection when broadcast widely on the Internet.

Where employees are mulling around the water cooler, the legitimate interests of and harm to the employer are different from when a complaint is made on social media. On social media, the potential for a broad audience of the general public to observe and re-

[19] *Prof'l Elec. Contractors of Conn., Inc.*, N.L.R.B. A.L.J., No. 34-CA-071532 (June 4, 2014).

[20] *Whole Foods Mkt., Inc.*, N.L.R.B. A.L.J., No. 01-CA-096965 (Oct. 30, 2013).

[21] *Lutheran Village*, 343 N.L.R.B. at 346.

[22] Dobbs' Law of Torts § 534 (''The damages difference. The traditional common law made much of the distinction between libel and slander. All libel was originally actionable without proof of special damages. Put differently, damages were presumed in the case of libel.'').

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broadcast such messages is far greater—as are the consequences for the employer. This is especially true because board law generally protects employee statements even when they are made impulsively and without regard for their validity or truthfulness. In order to give employers greater protection on social media, the board should balance the interests of the employees and the employer. Board acquiescence in reasonable prohibitions and restrictions applicable to or applied in the social media context does not prevent the airing of employee concerns that occur off-line (and which is already protected by board precedent). But it would prevent the potentially harmful business fallout from allowing such messages—often crafted in a moment of impulsive employee anger and frustration—to be irretrievably memorialized on the Internet and viewed by potential or actual customers, business collaborators and others, to the detriment of the employer's business.

Finally, all rules are not created equal, and some rules—such as those against harassment of fellow employees, protecting company proprietary information or requiring politeness in the presence of customers—have an obviously heightened legitimate business basis. For example, in *Lutheran Village*, the *mere maintenance* of a work rule guarding against harassment—which has a statutory basis in Title VII—did *not* violate the Act.[23] Other rules adopted by an employer may also be grounded in important interests of the employer, whether it be legal compliance, protection of property or the maintenance of decorum in the workplace for the proper delivery of goods and services to guests and customers. The general counsel, backed by the board, can play an important role as a gatekeeper of enforcement actions by weighing the likelihood and severity of the alleged work rule on the employee's rights as balanced against the employer's legitimate business interests and legal obligations.

By contemplating where the work rule lies in the spectrum of these interests and obligations, the NLRB can ensure optimal efficiency and effectiveness of its enforcement actions, since not all work rules are of equal weight and significance to the parties. In cases involving highly important work rules, the board should consider abandoning the test of how such a rule might be reasonably read by a hypothetical employee, and instead require some demonstration that the rule has actually chilled or inhibited some protected conduct. This would restore a modicum of predictability into the maintenance of those types of important business rules and avoid the needless invalidation of them on the basis of supposition and speculation as to their effect. This reasoned approach would give due respect and weight to employees' and employers' comparative stake in various work rules.

Practical Actions for Employers

It is important for a company to be the author of its own work rules and policies. An employer has certain conduct expectations that are based on legitimate business interests that have been identified over time. As a practical matter, if the legitimacy of employer rules becomes subject to NLRB scrutiny during an investigation of an unfair labor practice, the rules will be thoroughly examined by the NLRB. If any of the rules are deemed violative, the agency may authorize the issuance of a complaint. A decision will then have to be made whether to litigate or settle the case. In either event, the company risks that the agency will become a *de facto* co-author of the employer's policies—either the settlement or the resulting litigation decision can result in the NLRB co-determining or approving the substance of the handbook in ways that are incongruent with the employer's purpose for maintaining such a policy or rule in the first place. In view of this, it is worth considering the following in reviewing work rules and social media policies:

Red Flags: A policy that clearly and directly infringes on protected Section 7 rights should be revised or omitted to ensure compliance with the Act.

■ *Example:* In a recent ALJ decision involving the MUSE School owned by acclaimed movie director James Cameron and his wife, the NLRB struck down various provisions of the confidentiality and nondisclosure agreement despite a compelling interest by the Camerons in maintaining their privacy, the privacy of their family, and the privacy of their pupils' families. For example, an ALJ found that a prohibition from discussing ''compensation paid to MUSE owners and employees'' expressly restricted employees from discussing their wages.[24]

Clarify Broad Language With Examples: If the work rule or social media policy is unclear or could be read to have very broad application, give examples and be specific about what is intended by the rule. For example, rules prohibiting the disclosure of confidential and proprietary information can be revised to include examples of what is considered confidential and proprietary, such as customer lists, marketing initiatives, research and development and the like. By doing this, it would be easier for an employer to argue that an employee could not reasonably read the rule to apply to discussions or disclosures of wages and benefits, thereby avoiding a violation of the Act.

■ *Example:* As discussed above, the work rule in *Triple Play Sports Bar* that prohibited ''inappropriate'' discussions was viewed to be ''sufficiently imprecise'' and deemed unlawful, as it did not adequately explain or illustrate what was meant by the word ''inappropriate.''

Precisely Tailored Language: The ideal work rule should be narrowly written in order to protect vital company interests. The focus should be on what the company's real interests are and use language that the board is likely to view as a well-reasoned, precisely tailored work rule that sensibly regulates employees' behavior in a permissible way. To do this, avoid hyperbole and absolutes, and use appropriate limiting language where possible.

■ Example: An ALJ recently found a rule that involved ''providing false information to the company'' violated the Act because the rule inhibits employees

[23] *See, e.g.*, *Boulder City Hosp.*, 355 N.L.R.B. at 1247 n.14 (discussion of harassment policy).

[24] *MUSE School CA*, N.L.R.B. A.L.J., No. 31-CA-108671 (Sept. 8, 2014). Moreover, the threatened legal action for an employee's alleged violation of the confidentiality policy and nondisclosure agreement served as a separate basis for a violation of the Act because the underlying rules and obligations were found to be unlawful.

from merely making false statements when discussing wages, hours and working conditions. However, the ALJ noted that under existing law if the employer had promulgated a rule that subjected the employees to discipline for ''maliciously and/or knowingly false'' statements then such a rule would be viewed as lawful.[25] Rather than encourage an accessible rule with easy-to-understand language, this decision suggests that it is more important that rules are written with legally compliant language, even if the employee may not know the difference, in this instance, between simply ''false'' and ''maliciously and/or knowingly false'' language.

Wait-and-See: As noted above, the law in this area is still developing, and even various entities within the NLRB are in disagreement with respect to some issues. Further, much of the more recent case law in this area is based on highly subjective judgments and has yet to be reviewed by the board and the courts. Because the law is still developing, there may be enough uncertainty in some cases to warrant a wait-and-see approach with respect to some key rules, even to the point of testing them through litigation if it is deemed necessary.

■ *Example:* The board is currently considering the issue of whether employees should have a right to use an employer's e-mail to engage in protected activity in *Purple Communications, Inc.*[26]

Savings Clauses Don't Always (Ever?) Save the Day: Although the board has found a policy unlawful because it did not affirmatively exclude Section 7 protected speech from a policy, the board has yet to expressly approve a savings clause. It is likely that if a savings clause ever is approved by the board, it will have to be a simply worded one, not written only for lawyers but also to be easily understood by workers. Even then, however, a savings clause might not be effective.

■ *Example:* Even a simply worded savings clause that stated ''no force or effect'' would be given to unlawful parts of its policy were inadequate when the social media policy would be viewed by employees who had just witnessed the unlawful termination of two employees.[27]

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[25] *EYM King of Mich., LLC*, N.L.R.B. A.L.J., No. 7-CA-118835 (Sept. 29, 2014).

[26] *Purple Communications, Inc.*, 361 N.L.R.B. at *1.

[27] *Triple Play Sports Bar & Grille*, 361 N.L.R.B. at *11.

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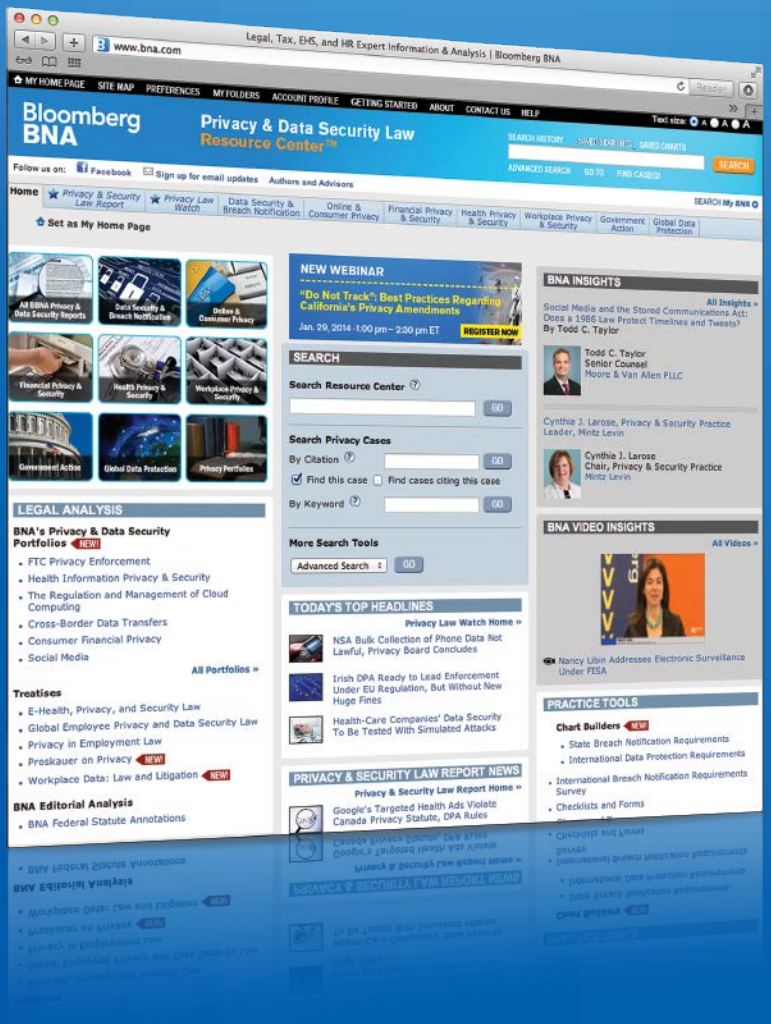

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