

From: (b) (6), (b) (7)(C)
To: [Marshall, Sean R.](#); [Heltzer, Daniel M.](#); [Colangelo, David A.](#); [Cullen, Patrick](#); [Cross, Avary E.](#)
Cc: [Compton, Kayce R.](#); [Lussier, Richard](#); [Dodds, Amy L.](#); [Shorter, LaDonna](#)
Subject: Floor and Decor, Case 05-CA-330890 (case-closing email)
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The Region submitted this case for advice on whether to issue complaint on the allegation that the Employer's Computer Assets and Systems policy is overbroad. We conclude that the policy is lawful under extant law and thus the Region should dismiss the charge, absent withdrawal.

The provision at issue, entitled "Using Computer Assets and Systems," is a subsection within the Employer's Associate Handbook. The policy states:

We are each entrusted with Company computer assets and systems ("Computer Resources") to aid us in our job duties. Computer Resources belong to the Company and include email, voicemail, internet and intranet access, and computer software, as well as the data they contain. Each of us has a responsibility to protect Computer Resources from damage, alteration, theft, fraud and unauthorized access. We have a responsibility to use Computer Resources in an efficient, professional, ethical, and lawful manner. We may never use Computer Resources to download, display or store material that is unlawful, inappropriate or offensive. If you receive such content, report the incident to your manager or Human Resources immediately. Do not use Computer Resources to send unauthorized solicitations or conduct business for other organizations.

Remember that electronic messages (such as emails and text messages) and posts on social media and networking sites (such as blogs, chat rooms, Facebook, Instagram, Twitter and LinkedIn) are permanent, transferable records that can impact the Company. Before sending or posting an electronic message, always ask yourself if you would want the general public to read the message – because someday it may.

Associates should avoid comments that violate Company policies or that are false, malicious, obscene or that might reveal confidential, proprietary or trade secret information. Nothing in this policy should be construed to limit associates' rights to discuss their wages, hours or working conditions or otherwise engage in protected concerted activities under Section 7 of the National Labor Relations Act. If you are ever unsure about posting comments or information, ask Human Resources before proceeding.

While you may make limited personal use of Computer Resources, you need to ensure that your use does not interfere with your ability to do your work or with workplace productivity in general. Your use of Computer Resources must be professional, ethical and lawful.

Company materials (including all copies) may only be used for Company purposes, in accordance with all applicable Company policies, and must be returned to the Company when you are no longer under the Company's employ. To the extent permitted or as required by law, for business reasons and in order to carry out our legal obligations (including, but not limited to, those arising out of our role as an employer), all use of Computer Resources,

including, but not limited to, emails transmitted or stored, Teams chats and conversations, other messaging, Internet browsing, web sites visited, files uploaded or downloaded, phone numbers dialed and calls received, may be monitored by the Company, including personal use, and including your use of Computer Resources to access online Web sites and services, and to access personal accounts to the extent there is a legitimate business, legal or compliance purpose for monitoring use of personal accounts. When you use Computer Resources to access personal accounts, it may be possible for the Company to see the pages and messages that you view, in real time or thereafter, even without using your password. Back-up copies of messages and files may exist, despite user deletion. The Company reserves the right to monitor, intercept, retrieve and delete any content stored in, created on, received from or sent through its systems or on its property, either in real time or when stored, for any reason, without the permission of any user, and without notice, in each case to the extent permitted or as required by law. By using Computer Resources for personal purposes, you consent to this and forego any expectation of privacy. You have no right or expectation of privacy when using Computer Resources.

The charge alleges only that this specific provision is facially overbroad and therefore its maintenance violates Section 8(a)(1). There is no evidence of enforcement or any allegation of discrimination.

Under extant law, employees generally have no Section 7 right to use their employer's IT systems and equipment and employers have a property right to control the use of their systems. *Caesars Entertainment d/b/a Rio All-Suites Hotel and Casino*, 368 NLRB No. 143, slip op. at 1, 5–8 (2019). The Board recognizes two exceptions – the rare case where the employer's email system is the only reasonable means for employees to communicate with one another and where there is proof of discrimination. *Id.* If discrimination is alleged, the Board utilizes the standard from *Register Guard*, 351 NLRB 1110, 1117–19 (2007), in which it determined that discrimination is established if an employer treats communications of a similar character disparately because of their union or other Section 7 status, thus drawing a distinction along Section 7 lines. *Id.* at 8 n.68.

Since the policy at issue here is specifically governing the use of the Employer's "computer assets and systems" and not employee conduct more broadly, *Rio All-Suites* applies. *See Pro Residential Services, Inc.*, 373 NLRB No. 100, slip op. at 2–3 (2024) (applying *Rio All-Suites* and finding the employer's maintenance of its rule restricting use of its equipment and information technology resources to be lawful). Here, there is no allegation of discriminatory enforcement or any evidence that the policy has been enforced at all. While the policy does permit limited personal use of the Employer's computer systems, it does not facially distinguish permitted use along Section 7 lines, and thus is not discriminatory under *Register Guard*. Additionally, there is no assertion that the Employer's computer system is the only reasonable way for employees to communicate with one another. Therefore, the Employer may lawfully restrict the use of its computer assets and systems and this policy governing the use of its computer resources does not violate the Act.

Accordingly, the Region should dismiss the charge, absent withdrawal. Please contact us with any questions or concerns.

(b) (6), (b) (7)(C)

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