

Hamilton County LAW LIBRARY NEWS

Professional legal information, services, and education

January 2015

National Labor Relations Board Permits Employees to Use Workplace Email Systems for Union Activity

by Bryan M. O'Keefe of Baker Hostetler LLP. Reprinted with Permission

In a landmark 3-2 decision, the National Labor Relations Board (“NLRB” or “Board”) reversed its own precedent and found that employees now have a presumptive right to use their employer’s email system to engage in communications relating to concerted activity protected by Section 7 of the National Labor Relations Act—including union organizing—during nonworking time. *Purple Communications, Inc.*, 361 NLRB No. 126 (Dec. 11, 2014). According to the Board, an employer may rebut the presumption by demonstrating that special circumstances necessary to maintain production or discipline justify restricting employee rights, although the Board stated that these exceptions will be “rare.” The ruling is the latest pro-union decision from the Board, and carries significant consequences for employers everywhere because of the importance of workplace email and the prevalence of policies restricting the use of business email for nonwork purposes.

The NLRB previously held in *Register Guard*, 351 NLRB 1110 (2007), that an employer may prohibit nonwork-related use of its email system, so long as the employer does not discriminate against concerted activity. In *Purple Communications*, the Board considered a policy that was lawful under *Register Guard* and prohibited employees from using “the computer, internet, voicemail, and email systems . . . in connection with . . . activities on behalf of organizations or persons with no professional or business affiliation with the Company” or from “sending uninvited email of a personal nature.” The Board overruled *Register Guard* and found that the employer’s policy was illegal under the National Labor Relations Act. In doing so, the Board primarily relied on an almost 70-year-old Supreme

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<http://www.hamilton-co.org/cinlawlib/>

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Tech Tip: Fastcase / HeinOnline Account Synchronization

By Julie Koehne, Assistant Law Librarian, Systems

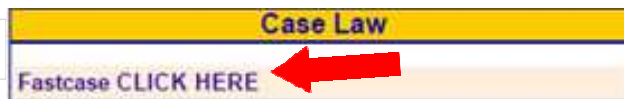
Solo attorney subscribers and attorneys from subscriber firms that have fewer than 50 attorneys may use Fastcase within HeinOnline offsite. This gives you the ability to have case law included in the search results from HeinOnline’s “search all subscribed collections” tool, and you will see Fastcase listed as a library on your HeinOnline Welcome page. First, you need to synchronize Fastcase with HeinOnline with your User Token. Follow these steps to do so.

Step 1: Login to our website at

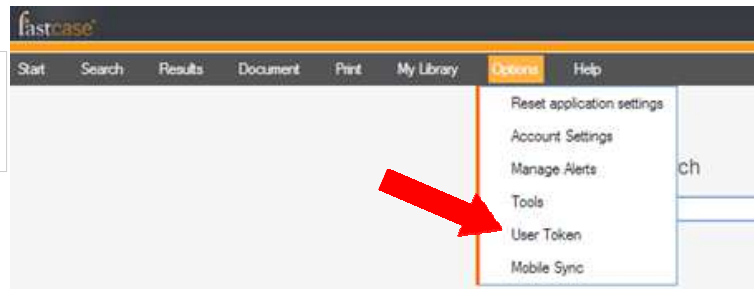
<http://www.hamilton-co.org/cinlawlib/intra/login.asp>

Make sure you have put a check in the terms and agreements box.

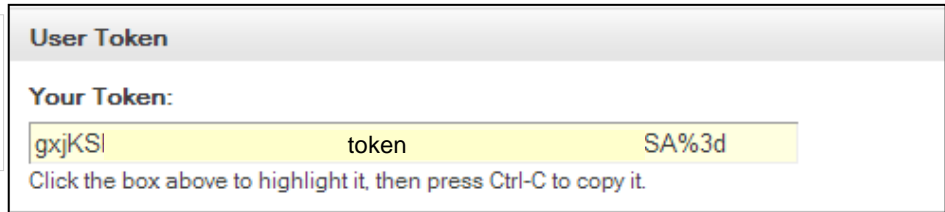
Step 2: Click on “Fastcase CLICK HERE”.



Step 3: Click on the Options drop down menu and select User Token.



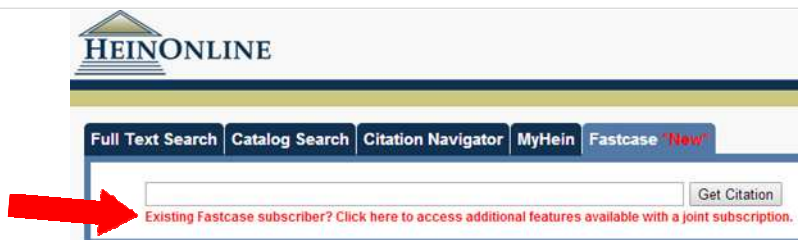
Step 4: Click in the box and highlight it, then press Ctrl-C to copy the token.



Step 5: Open HeinOnline from within the law libraries remote access page, located in the lower middle section of the Case Law, News & Journals tab.



Step 6: Click on the Fastcase “New” tab, then click on “Existing Fastcase subscriber? Click here...” below the Get Citation box.



Step 7: Click on “Fastcase Users with IP Authentication or Single Sign-on.”

The screenshot shows the HeinOnline website interface. At the top, there are navigation tabs: Resources, Search, Citation Navigator, Catalog Search, MyHein, and Fastcase (marked as 'New'). Below the navigation is a sidebar with 'Citation Navigator' and a 'Bluebook © Citation' form. The main content area is titled 'HeinOnline & Fastcase Account Synchronization'. It contains text explaining the partnership and lists additional features for existing Fastcase subscribers. A red arrow points to the link 'Fastcase Users with IP Authentication or Single Sign-on'.

Step 8: Click in the box and press Ctrl-V to paste the token retrieved from Fastcase earlier, then click on the "Validate Token" button.

This screenshot shows the 'Validate Token' step of the account synchronization process. It includes the same introductory text as Step 7. A red arrow points to a text input field containing a token: '9KykCAOORRw0zSA%3d'. Below the input field is a 'Validate Token' button. A note below the button says: 'To retrieve your Fastcase token, login to Fastcase, go to Options --> User Token, or click here'.

Step 9: If all goes right, you will get the following success message.

Success: Thank you for synchronizing your HeinOnline & Fastcase Accounts

You will now have access to the following Fastcase features within HeinOnline:

- * Ability to search the full text of over 7 million cases
- * Ability to see case law search results when searching across all subscribed collections
- * Bad Law Bot full negative treatment analysis
- * ScholarCheck Cases that cite this case analysis
- * ScholarCheck Cases that cite this article analysis

You will also now see Fastcase listed as a subscribed collection on your Welcome page. [Click here](#) to start your research from the Fastcase collection.

[Click here to view the Fastcase Quick Reference Guide.](#)

To begin, you can click on “Click here to start your research” on the success page.

Or when re-entering HeinOnline, click on Fastcase listed within the collections available.

This screenshot shows a list of collections available on HeinOnline. The items listed are: Early American Case Law *New*, English Reports, European Centre for Minority Issues, Fastcase, Federal Register Library, Legal Classics, and Manual of Patent Examining Procedure. The 'Fastcase' collection is circled in red.

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Court case, *Republic Aviation*, 324 U.S. 793 (1945), which found that employees had a right to solicit one another for Section 7 purposes (including union organizing) on non-working time, absent special circumstances. The Board found that this same rule applied to employer email systems, so that employees can presumptively use email for Section 7 purposes on nonworking time, “absent a particularized showing of special circumstances regarding the employer’s need to maintain production and discipline.”

The Board emphasized that the special circumstances exception to justify a complete ban on nonwork email use “will be the rare case.” The Board did find that employers are still free to implement and enforce uniform and consistent controls, “such as prohibiting large attachments or audio/video segments, if the employer can demonstrate they would interfere with the email system’s efficient functioning.”

In its decision, the Board also distinguished a long line of cases that previously had found that employees did not have a Section 7 right to use employer property such as bulletin boards, telephones, fax and copy machines, and public address systems. The Board held that “employee email use will rarely interfere with others’ use of the email system or add significant incremental usage costs” and that “email systems function as an ongoing and interactive means of employee communication in a way that other, older types of equipment clearly cannot.” More ominously, the Board refashioned the “broad pronouncements” in those cases as nonbinding dicta, and stated that the rea-

soning which prohibited employee use of the telephone system was also “unpersuasive,” though the Board left that issue for another day.

The most vexing issue for employers going forward, as pointed out by NLRB member Philip A. Miscimarra’s dissent, is likely differentiating between “working” and “nonworking” time for sending emails. After all, due to the very nature of email, employees frequently intertwine nonbusiness emails about sports, shopping, and family life with work emails to colleagues. Drawing the line between the two is challenging and far different from the types of nonworking-time solicitations in *Republic Aviation*, which usually take place in a defined area like an employee break room or cafeteria. The very notion that “working time is for work” appears to be under attack by the Board’s ruling.

Employers should immediately review their employee handbooks and policies for rules that are inconsistent with the NLRB’s decision. The NLRB has long held that the mere promulgation of an unlawful work rule violates the NLRA, even if the rule is never enforced against an employee. Indeed, in *Purple Communications* there was no allegation that the work rule in question was used to discipline an employee. Instead, the case originated in connection with a union’s objections to an unsuccessful election.

Purple Communications again demonstrates the Board’s aggressive pro-labor agenda. As a result of this decision, employers can expect union organizers to encourage employees to send work emails advocating for labor unions and then file unfair labor practice charges with the NLRB if the employer disciplines the employee for doing so, even if the

employer believes that the email was sent on working time. Employer policies previously lawful under Register Guard also will be the subject of charges from the Board. As a result, it is critical that employers work closely with their labor counsel to develop appropriate policies consistent with the new rule and implement a proactive labor relations approach that prevents unnecessary NLRB litigation.

If you have any questions about this alert or how it may impact your business, please contact any member of Baker Hostetler's [Labor Relations](#) team.

Research Assistance

Did you know that the law library provides legal research assistance to our subscribers? If you have a legal research question, feel free to call, email or stop in to have us work on it for you. Our team of talented librarians can find statutes, cases, treatises, forms and other legal materials to help get you on your way. We can also Shepardize cases to help you determine whether they are still good law and aid you in locating other potentially relevant case law. Simply give us the details of what you'd like us to search for you and we'll be happy to assist you with research and document delivery. We can provide you with the information we locate for you in-person, by phone or via email or fax.

While we provide basic reference assistance to all patrons in the library, subscribers reap the benefits of these more comprehensive services, both on and off-site. We're here to help you with your legal research needs!

Upcoming CLEs

Free to subscribers; \$50 for non-subscribers
To register, call 513.946.5300 or via email reference@cms.hamilton-co.org

WestlawNext CLE

Presenter: Susan Reale

Friday, January 16

Noon-1pm

Approved for 1.0 hour of general CLE credit in Ohio

CLE Offerings in 2015

Thanks to everyone who volunteered time to present CLEs at the Law Library this past year! We have tentative plans to offer a number of CLEs in 2015. If anyone is willing to present, please contact Laura Dixon-Caldwell at 946.5300 or ldixoncaldwell@cms.hamilton-co.org

Subscriber Renewals

Thanks very much to the many subscribers who have already renewed for 2015. The staff is appreciative of your decision to continue as a library user in the new year. We will send a statement in early January as a prompt for payment then by anyone who hasn't yet renewed. A timely payment ensures your continued access to legal information resources and services including newsletters and news updates, borrowing privileges, CLE attendance, document delivery, and more. We will not revoke privileges until late February so there is time. Please call Vanessa or Mary with any questions about your invoice or library services.

Subscriber Benefits

All subscribers have access to the following valuable resources and services:

Circulation privileges to borrow from over 40,000 print volumes for up to 6 weeks at a time

Access to extensive electronic databases from the Law Library, including LexisNexis, Shepards', Westlaw, IntelliConnect, Hein Online Law Journals and Federal Register, and over 70 Aspen /LOISLaw treatises in 16 substantive areas

Wireless network throughout the Law Library

Polycom videoconferencing

Five meeting rooms with speaker phones

Professional reference service by our law librarians, available via e-mail, telephone, and in person

Free document delivery by fax or e-mail of print and electronic materials

Inexpensive CLE seminars throughout the year, on legal research and substantive topics

In addition, solos and attorneys whose firm has a subscription have 24 hour remote access to Fastcase.com case law, Aspen/ LOISLaw treatises, HeinOnline and IntelliConnect.

You and the Legal System

The You and the Legal System series will take a hiatus in December and January and resume in February 2015. If you would like to be placed on the mailing list for news on upcoming events, contact [Laura Dixon-Caldwell](#).

Public Computer Management

Some library subscribers use the Main Room public computers regularly so we want to give you a heads up about a change to those computers. We have added a computer management application to manage public use and improve efficiency. Users will log in and agree to our computer use policy. The login is one's last name and borrower number (the same number used when logging on to our website for off-site use). Public users may request a login from a staff member. We have one hour session limits, but we can extend a session, assuming there isn't a wait list. The computers shut down automatically at day's end, providing a five minute warning. Please speak with any member of the staff if you have questions. We will try it on the public computers for a while before deciding exactly how to deploy it in the computer room.



Finding Ohio Forms

One of the most common questions we get here at the Law Library is “Do you have a form for?” Check out this list of form resources available at the Law Library. If you have any questions, please contact us at 513.946.5300.

Form Books:

Am Jur Forms
 Anderson’s Ohio Civil Practice
 Baldwin’s Ohio Civil Practice
 Couse’s Ohio Forms
 Katz & Giannelli Criminal Law
 Merrick-Rippner Probate Law
 Ohio Annotated Business Entities
 Ohio Domestic Relations Practice Manual
 Ohio Estate Planning: Wills and Trusts Library
 Ohio Forms of Pleading and Practice
 Ohio Forms and Transactions
 Ohio Landlord Tenant Law
 Ohio Limited Liability Companies
 Ohio Probate Practice and Procedure
 Ohio Real Property Law and Practice
 Ohio Transaction Guide

Online Resources

Aspen/LoisLaw

Forms and checklists are available in the following treatise libraries:

Bankruptcy Law
 Business Practice Law
 Construction Law
 Elder Law
 Employment Discrimination Law
 Employment Law
 Estate Planning
 Evidence
 Family Law

General Litigation
 Internet and E-Commerce Law
 Personal Injury
 Product Liability
 Real Estate

EBSCO

The EBSCO library offers forms for topics such as:

Accident Claims
 Bankruptcy
 Real Estate
 Consulting & Contracting
 Divorce
 Green Cards
 Human Resources
 Living Trusts
 Patents
 Personal Injury
 Wills

*Remote access is available to subscribers who are solos or firm attorneys whose entire firm has a subscription to the Law Library.

Links:

Hamilton County Forms:

Common Pleas and Municipal:

<https://www.courtclerk.org/formqueries.asp>

Domestic Relations Forms:

<http://www.hamilton-co.org/domestic/FormsProcedures/Forms.html>

Juvenile Forms:

http://www.hamilton-co.org/juvenilecourt/FormsHome/forms_home.asp

Probate Forms:

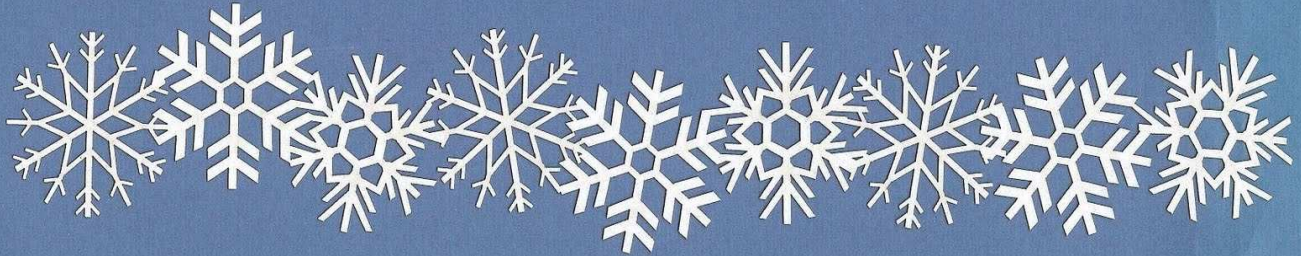
<http://www.probatect.org/services/index.htm>

Upcoming Events:

January 16: WestlawNext CLE

Law Library Holidays:

The Law Library will be closed on Thursday, January 1 in observance of New Year's Day and Monday January 19 in observance of Martin Luther King Jr. Day.



January 2015 Law Library Newsletter

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ADDRESS CORRECTION REQUESTED

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