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Labor and Employment Law

NLRB Increasingly Focused on Assisting Non-Union Employees

July 2012

The National Labor Relations Board (NLRB) recently launched a separate webpage, Protected Concerted Activity, to educate non-union employees of their rights under the National Labor Relations Act (NLRA). In particular, the site discusses the right of employees to act together for their mutual aid and protection even if they are not unionized, and encourages non-union employees to contact the Board for help. Specifically, it states, in part: "[t]he law we enforce gives employees the right to act together to try to improve their pay and working conditions or fix job-related problems, even if they aren't in a union. If employees are fired, suspended, or otherwise penalized for taking part in protected group activity, the National Labor Relations Board will fight to restore what was unlawfully taken away. These rights were written into the original 1935 National Labor Relations Act and have been upheld in numerous decisions by appellate courts and by the U.S. Supreme."

The webpage is part of an on-going effort by the NLRB to breathe new life into a law largely ignored by non-union employers, and expand the role of the Board into areas outside its traditional focus of regulating union-management relations, as less than 7% of private sector employees now belong to a union.

Other efforts to prop up the Board include a proposed rule requiring employers to display a poster describing rights under the NLRA; a more aggressive stance on social media policies that prohibit employees from discussing sensitive issues on-line such as wages, benefits, working conditions, and supervisory treatment; challenges to traditional "at-will" provisions; and

procedural changes that would result in "quickie elections" designed to reduce the time employers have to educate employees when faced with union organizing activities.

Given the more aggressive marketing effort by the NLRB to encourage and protect concerted activity among non-union employees, employers should review their policies and train supervisors on these recent developments, which have converted long followed practices into violations of federal law. For instance, the Board has taken the position that any policy that could reasonably chill an employee's right to exercise rights guaranteed under the NLRA is unlawful. Examples include, broad non-disparagement policies; prohibitions on discussing wages, benefits, or working conditions; prohibitions on the use of a company's logo; requiring company permission before posting comments on line; requiring the reporting of any inappropriate comments; and restrictions on "friending" non-management co-workers.

Violations can lead to reinstatement, back pay, and the posting of notices informing the workforce of the violation and their rights under the Act.

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