>> Understanding the National Labor Relations Act

Notification of Employee Rights

With the release of the final rule on "Notification of Employee Rights under the National Labor Relations Act" by the National Labor Relations Board on August 30, 2011, it is more important than ever that supervisors be aware of their obligations under the Act. The regulation will have a significant impact on union-free and partially unionized employers.

Under the new rule, all employers covered by the National Labor Relations Act will be required to post a notice informing employees of their rights to organize. Such a notice includes a list of unlawful employer conduct and provides contact information for the NLRB, which not only makes the employer and/or supervisors more vulnerable for claims of unfair labor practices, but it may also create questions by the employee that supervisors need to be ready to answer.

Important Note: On April 17, 2012, a federal appeals court in Washington, D.C., blocked the National Labor Relations Board (NLRB) from requiring American businesses to post its NLRA Employee Rights Poster by April 30, issuing a temporary injunction to stop the mandate. The NLRB said its regional offices will not implement the rule until the appeal is decided. Further, the labor board will appeal a part of the ruling that raised questions about the rule's enforcement mechanisms, as well as the ruling that said the agency did not have the legal authority to issue the rule.

Employees covered by the NLRA are afforded certain rights to join together to improve their wages and working conditions, with or without a union.

Union Activity

Employees have the right to attempt to form a union where none currently exists, or to decertify a union that has lost the support of employees.

Examples of employee rights include:

> Forming, or attempting to form, a union in the workplace;
> Joining a union whether the union is recognized by the employer or not;
> Assisting a union in organizing fellow employees;
> Refusing to do any or all of these things; and
> To be fairly represented by a union.

Activity Outside a Union

Employees who are not represented by a union also have rights under the NLRA. Specifically, the NLRB protects the rights of employees to engage in "protected concerted activity", which is when two or more employees take action for their mutual aid or protection regarding terms and conditions of employment. A single employee may also engage in protected concerted activity if he or she is acting on the authority of other employees, bringing group complaints to

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the employer's attention, trying to induce group action, or seeking to prepare for group action.

A few examples of protected concerted activities are:

> Two or more employees addressing their employer about improving their pay
> Two or more employees discussing work-related issues beyond pay, such as safety concerns, with each other
> An employee speaking to an employer on behalf of one or more co-workers about improving workplace conditions

Supervisors may not:

> Prohibit employees from discussing a union during non-work time, or from distributing union literature during non-work time in non-work areas, such as parking lots or break rooms
> Question employees about their union support or activities in a manner that discourages them from engaging in that activity
> Fire, demote, transfer, reduce hours or take other adverse action against employees who join or support a union or act with co-workers for mutual aid and protection, or who refuse to engage in such activity
> Threaten to close their workplace if employees form or join a union
> Promise or grant promotions, pay raises, or other benefits to discourage or encourage union support
> Prohibit employees from wearing union hats, buttons, t-shirts, and pins in the workplace except under special circumstances
> Spy on or videotape peaceful union activities and gatherings

Who is covered?

Most employees in the private sector are covered by the NLRA. However, the Act specifically excludes individuals who are:

> employed by federal, state, or local government
> employed as agricultural laborers
> employed in the domestic service of any person or family in a home
> employed by a parent or spouse
> employed as an independent contractor
> employed as a supervisor (supervisors who have been discriminated against for refusing to violate the NLRA may be covered)
> employed by an employer subject to the Railway Labor Act, such as railroads and airlines
> employed by any other person who is not an employer as defined in the NLRA

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