



Concerted Activities: What Employee Conduct is Legally Protected?



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Current State of the NLRB



David Prouty
Only sitting member of the
National Labor Relations Board



William Cowen
Acting General Counsel of the
National Labor Relations Board

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Since President Trump's election in November 2024, the National Labor Relations Board ("Board" or NLRB) has undergone significant changes. These changes started to take effect even before President Trump took office. On December 11, 2024, the U.S. Senate rejected President Biden's nomination to reconfirm the then current NLRB Chair Lauren McFerran. McFerran's failed reconfirmation left the NLRB with two Democrats (Gwynne Wilcox and David Prouty), one Republican (Marvin Kaplan), and two vacancies.

The NLRB is made up of 5 members who are appointed by the President and they each serve on staggered 4-year terms. Typically, Democratic Boards favor unions more and Republican Boards favor employers more, so there is always a change in labor law when a new party takes over the White House.

When President Trump came into office there were two Democratic appointees and one Republican appointee. A week after the inauguration, President Trump terminated the Board's General Counsel ("CG") Jennifer Abruzzo, which was not a surprise, and it is what President Biden did to President Trump's former GC Peter Robb. But what was surprising is that President Trump also fired Board

Member Gwynne Wilcox in the middle of her term. Whether or not the President has authority to remove a Board member without cause is currently pending before the Supreme Court, but this move left the Board with two members, which means it lacked a quorum.

When the Board lacks a quorum, it essentially means it is shut down until it regains at least 3 members. Without a quorum the Board cannot issue decisions, set or overturn precedent, or enforce certain subpoenas. Regional offices do continue to handle initial case proceedings, including intake, investigations, and holding union elections.

For employers, the Board lacking a quorum is a mixed bag. On the one hand, the NLRB lacking authority to issue decisions can delay rulings that could have been unfavorable to employers with pending cases. On the other hand, the Board is unable to change employee-friendly precedent that came through over the past four years. Like the *Cemex* case, which was the focal point of our presentation last year.

A few months ago, Board member Marvin Kaplan's term expired, and that leaves David Prouty as the only current serving member of the Board.

After GC Abruzzo was terminated, President Trump appointed William Cowen as Acting GC of the Board. Cowen is a longtime NLRB employee and is a former Board member appointed by George W. Bush.

President Trump has since appointed Scott Mayer, who is currently the Chief Labor Counsel for Boeing and James Murphy, a career NLRB lawyer for two of the open seats on the Board. He also has appointed Crystal Carey, a defense attorney at Morgan Lewis to serve as the Board's GC. Carey and Murphy have made it through the first rounds of Senate confirmation hearings, however, there is more uncertainty with Scott Mayer, given Boeing's recent strike activity and his involvement in the disputes as Boeing's Chief Labor Counsel.

Shift in Policies & Enforcement

Revoked GC Memos

- GC 23-08 & 25-01 (non-compete & “stay-or-pay” agreements)
- GC 22-06, 24-04, 21-06, & 21-07 (unfair labor practice remedies)
- GC 21-05 (injunctions)
- GC 22-02 (injunctive relief for unlawful threats)
- GC 23-02 (electronic monitoring)
- GC 25-04 (harmonize the NLRA with EEO laws)
- GC 21-03 (strengthening Section 7 rights)

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Earlier this year, Acting GC, William Cowen issued GC Memoranda ("GC Memo") 25-05, which rescinded more than a dozen GC Memos issued by the recently terminated GC Jennifer Abruzzo. Nearly all the rescinded GC Memos were significantly favorable to organized labor and employees. In addition to the fully rescinded Memos, GC 25-05 also rescinded 13 other GC Memos pending further guidance from the Board, signaling that the issues in these Memos will be a focal point of the new administration. GC 25-05 marks the anticipated shift to a more pro-employer Board.

While it is the Board itself that effectuates the decisions and establishes the precedent, it is the Board's GC who sets the course for the Board with the power to investigate and prosecute unfair labor practice charges, issue general guidance on key issues concerning employee and employer respective rights, provide direction to the Board's field offices in processing cases, and ultimately, serving up the cases that will allow the Board to reverse or establish precedential decisions.

- GC Cowen's initial memo revoked previously issued GC Memos 23-08 and

25-01, which asserted that offering or enforcing non-compete or “stay-or-pay” agreements, which require employees to remain employed for a certain period or face financial penalties, could violate the NLRA.

- GC Memos 22-06, 24-04, 21-06, and 21-07 all addressed procedural issues with unfair labor practice proceedings, with an eye toward enhancing remedies and strengthening enforcement.
- Memo 21-05 emphasized the use of injunctions to obtain interim relief in cases involving unlawful withdrawal of recognition, refusal to bargain, or refusal to hire cases.
- Memo 22-02 focused on securing early injunctive relief in response to unlawful threats during a union organizing campaign.
- 23-02 addressed concerns around electronic monitoring in the workplace, and how it can interfere with employees’ ability to engage in protected activity.
- Memo 25-04, provided guidance intended to harmonize the NLRA with federal equal employment opportunity laws and emphasized that employers could not rely on EEO policies or workplace rules to discipline or suppress protected concerted activity.
- Memo 21-03 focused on strengthening Section 7 rights under the NLRA and emphasized that protected employee activity does not need to be formally organized or involve multiple employees.

What is the law?

- National Labor Relations Act (“NLRA” or the “Act”)
 - Protects non-supervisor employees in the right to organize, join a union, bargain collectively, and to engage in other concerted protected activities
 - Referred to as Section 7 rights
 - Supervisors, are NOT protected by the Act
- Defines what is lawful and unlawful conduct for employees, unions, and employers

The National Labor Relations Act or NLRA allows private sector employees the right to organize and join unions. Importantly, the Act only applies to employees, supervisors are not covered. The Act protects non-supervisor employees in the right to organize, join a union, bargain collectively, and to *engage in other concerted protected activities*. These rights are referred to as Section 7 rights.

They are NOT just rights for unionized employees

- The NLRA applies to non-supervisory employees in both union and union-free workplaces.

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This is a common misconception a lot of employers and employees have about the Act. It does not just apply to unionized workforces. Employees at both unionized and union-free workplaces have the same rights.

Employee Rights

- Section 7 of the NLRA provides:
 - Employees have the right to self-organize, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted protected activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any and all such activities except 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)

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Employees have Section 7 rights under the Act. The text of Section 7, it states in-part, “Employees have the **right to self-organize**, to **join labor organizations**, to **bargain collectively** and to **engage in other concerted protected activities . . . for the purpose of other mutual aid or protection.**”

Employees also have the right to refrain from any and all such activities. In addition to having the right to join a union, employees also have the right to refrain from joining a union and refrain from engaging in any of these activities.

Section 7 Rights

- Right to self organize, form, join, or assist a labor organization, to bargain collectively, and to engage in other concerted protected activities
- Two or more employees representing a group of employees, acting together in a lawful manner, for a common, legal, work-related goal or objective

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Section 7 rights include the right to self organize, form, join, or assist a labor organization, to bargain collectively, and to engage in other concerted protected activities. A “concerted protected activity” is when two or more employees representing a group of employees, act together in a lawful manner, for a common, legal, work-related goal or objective.

For example, in the hospital setting: if an employee comes to you and says, “I do not think the nurses make enough money. We should receive a raise.” Although only one individual employee made that statement, it is considered “concerted protected activity” because she is making a statement on behalf of the nurses. It does not matter if the other nurses wanted her to make that statement or not. The hospital could not punish that employee in any way for making that statement. This example works for any type of business when an employee is bringing a “group” issue or complaint to management.

How to determine, what activity is protected under Section 7?

- Protected Concerted Activities must be both:
 1. “Concerted”
AND
 2. Engaged in for the purpose of “mutual aid or protection”

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Section 7 provides employees the right to engage in protected concerted activities. Covered conduct must be **“both ‘concerted’ and engaged in for the purpose of ‘mutual aid or protection.’”**

An employer commits an unfair labor practice (ULP) if they “interfere with, restrain, or coerce employees in the exercise” of these protected rights.

Meyers I & Meyers II

- *Meyers I*
 - employee activity is “concerted” when it is “engaged in with or on the authority of others, and not solely by and on behalf of the employee himself”
- *Meyers II*
 - concerted activity “encompasses those circumstances where individual employees seek to initiate or to induce or to prepare for group action, as well as individual employees bringing truly group complaints to the attention of management”

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In 1984, the Board established a test for assessing concerted activity in *Meyers Industries*, 268 NLRB 493 (1984) (*Meyers I*). In *Meyers I*, a truck driver was terminated after refusing to drive what he considered an unsafe truck and after reporting safety violations to the Ohio State Highway Patrol and the Tennessee Public Service Commission. Specifically, the driver had an accident while operating the truck he previously complained about, then after the accident, he contacted the Tennessee Public Service Commission to arrange for an inspection of the truck. After the inspection, a citation was issued, and the truck was placed out of service. The driver was terminated for his report and claimed his discharge violated Section 8(a)(1) of the Act. The Board held that the termination did not violate Section 8(a)(1) because for an employee’s activity to be deemed “concerted,” it must be engaged in with or on the authority of other employees, and not solely by and on behalf of the employee himself.”

The Board reasoned that the driver ALONE refused to drive the truck and trailer; he alone contacted the Tennessee Public Service Commission after the accident; and, prior to the accident, he alone contacted the Ohio authorities. Because the employee acted solely on his own behalf, it could not be said he

engaged in truly concerted activity.

A few years after the *Meyers I* decision in 1986, the Board was asked to revisit its holding. In *Meyers II*, the Board clarified that concerted activity “encompasses those circumstances where individual employees seek to initiate or to induce or to prepare for group action, as well as individual employees bringing truly group complaints to the attention of management.” The Board explained that the definition of concerted activity is not exhaustive and whether an employee engaged in it is “based on the totality” of the evidence.

Under *Meyers II*, an individual employee who raises a workplace concern with a supervisor or manager is engaged in concerted activity if there is evidence of “group activities”—for example—prior or contemporaneous discussions of the concern between or among members of the workforce—warranting a finding that the employee was indeed bringing to management's attention a “truly group complaint,” as opposed to a purely personal grievance.

A Change in Standard: Alstate Maintenance Decision

An employee's individual "gripes" and complaints related to work do not amount to concerted activity merely because the complaints were uttered in the presence of other employees.

1. Statement made in a meeting to announce a decision affecting conditions of employment;
2. Decision announced affected multiple employees at the meeting;
3. Employee who spoke did so to complain about the decision, not merely to ask questions;
4. Speaking employee protested the decision's effect on the workforce, not solely its impact on the speaking employee; and
5. Meeting presented the first opportunity employees had to address the decision.

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The Board is constantly shifting its position on major issues depending on what political party is in the White House. Sometimes the Board favors unions, sometimes the Board favors employers, but really both groups are disadvantaged because the law is constantly changing.

An example of one of these shifts came in 2019, with the Board's decision in *Alstate Maintenance, LLC*, 367 NLRB No. 68 (2019). In *Alstate Maintenance*, a skycap employee at Kennedy International Airport was discharged for "gripping" about not being tipped by certain passengers. The employee was working with three other workers when he was approached by his supervisor who told him that they were needed to assist a soccer team with their equipment. The employee said, "we did a similar job a year prior, and we didn't receive a tip for it." When the equipment arrived to be loaded, the employees walked away. Each was terminated.

The Board held that individual griping does not qualify as concerted activity solely because it is carried out in the presence of other employees and a supervisor and includes the use of the first-person plural pronoun, *i.e.*, "We".

The Board also established a 5-factor test for determining whether there is a

reasonable inference that in making a statement at a meeting, in a group setting, or with other employees present, the employee was seeking to initiate, induce, or prepare for group action. The factors are:

1. The employee's statement was made in an employee meeting called by the employer to announce a decision affecting wages, hours, or some other term or condition of employment;
2. The employer's decision that was announced affected multiple employees attending the meeting;
3. The employee who spoke up in response to the announcement did so to complain about the decision, not merely to ask questions about how the decision would be implemented;
4. The speaking employee protested the decision's effect on the workforce, not solely its impact on the speaking employee; and
5. The meeting presented the first opportunity employees had to address the decision.

A Return to *Meyers I & II*

- Miller Plastics, 372 NLRB No. 134 (2023)
 - Overruled *Alstate Maintenance*
 - The “question of whether an employee has engaged in concerted activity is a factual one based on the totality of record evidence” and should not be limited by *Alstate*’s “unduly cramped” list of factors.
- TIP: Consult Counsel!

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The helpful *Alstate Maintenance* standard remained in effect for just over four years, until the Board, under President Biden, decided to reverse course and return to the fact-driven analysis under the *Meyers* cases. In *Miller Plastics*, the Board faced a similar set of facts presented in the *Alstate* case. In *Miller*, an employee claimed that he was terminated for questioning the company’s COVID-19 protocols and the employer’s decision to remain open during an all-employee meeting. During a company meeting the employee spoke up and shouted, “we shouldn’t be working” and voiced other concerns about the company’s lack of COVID precautions.

Relying on the *Alstate* decision, the employer argued that the employee’s COVID concerns were individual gripes that were not intended to induce group activity. The Board disagreed, and overruled *Alstate* and returned to the more vague and malleable standard in *Meyers I & II* which provides a factual review of “the totality of all available evidence” to determine whether the employee was engaged in Section 7 protected activity.

In *Miller Plastics*, the Board called for a broad interpretation of the claimed

concerted activity based on the context in which the complaint was made. Thus, under this new/old standard, employers will be forced to return to the opaque "totality" analysis to discern whether a complaint by a single employee or a conversation between an employee and supervisor is likely to be viewed as protected concerted activity.

Implications of Miller Plastics

- Employers must be cautious when taking disciplinary action against employees who have complained about:
 - Wages;
 - Hours; or
 - Working conditions.
- Less ability for employers to argue bright-line rules that an employee's individual concerns are not concerted activity

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Returning to the totality of the circumstances test will likely bring more employee conduct, questions, and remarks under the cover of protected activity. Additionally, even if an employee raises a concern with the employer and did not have the “intent to induce” concerted activity at the time the statement was made, the activity still could be concerted if it later sparks group action or complaints.

The totality of the circumstances test requires a much more thorough and detailed analysis of the facts of a given situation. Employers need to weigh decisions that may involve protected concerted activity very carefully.

Unfair Labor Practices By Employers

- Section 8 of the NLRA prohibits employers from interfering with, restraining or coercing employee(s) in the exercise of their Section 7 rights
- This means supervisors cannot commit any “adverse employment action” against an employee(s) for engaging in any “protected concerted activity”
 - Disciplining/terminating an employee for:
 - discussing wages with co-workers
 - discussing the “benefits” of having a union
 - making a social media post complaining about work

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Section 8 of the Act prohibits employers from interfering or restraining employees in the exercise of their Section 7 rights. Supervisors cannot undertake any “*adverse employment action*” against an employee for engaging in any “protected concerted activities.”

Unions also cannot interfere with employees’ Section 7 rights, and employees can similarly file unfair labor practice charges against unions.

Unfair Labor Practices By Employers

- Section 8(a)(4) makes it unlawful for employers to discharge or retaliate against an employee for:
 - Filing a charge with the NLRB;
 - Providing an affidavit to NLRB investigators; or
 - Testifying at an NLRB hearing.

Section 7 Rights - Protected Concerted Activity

- Sign a union authorization card
- Say they want a union
- Attend union meetings
- Wear union buttons, stickers, or T-shirts
- Post on social media about terms and conditions of employment
- Discuss (and complain about) wages, hours, benefits, or other working conditions
- Discuss the benefits of a union during work time (if other nonwork-related subjects are permissible)
- Refuse to work in unsafe conditions
- Engage in a lawful strike

**Are employees protected in
expressing or discussing
political and social justice
issues at work?**

MAYBE?

Protected Concerted Activity: Political & Social Justice Issues

- *Home Depot, USA*, 373 NLRB No. 25 (2024)
 - Black Lives Matter marking was protected concerted activity
 - An individual employee's action is "concerted" if it is a "logical outgrowth" of employees' prior or ongoing protected concerted activity

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Early last year, the Board expanded the types of messages employees are permitted to display in the workplace in the *Home Depot* case.

In that case, the Board found that Home Depot violated the Act when a management employee told a sales specialist in its flooring department that he had to remove his "BLM" marking from his standard orange Home Depot apron. Importantly, this was not an employee in a warehouse, this was a customer-facing employee. Home Depot had a dress code policy that prohibited "displaying causes or political messages related to workplace matters." Because of this policy, the employee was asked to remove the marking, which he refused to do. The employee's manager informed him that he could not work with the marking on his apron, and two days later the employee resigned noting "ongoing racial harassment and discrimination during his employment."

At the beginning of the employee's employment, he and several other employees complained to management about racial harassment from a supervisor and the vandalism of a Black History Month poster in the employee breakroom. Following this conduct the employee placed the BLM marking on his apron.

The Board relied on the "logical outgrowth theory" and held that the employee's

individual activity of wearing a BLM marking on a Home Depot apron was an extension of prior workplace complaints about racial discrimination that began shortly after the employee started working six months prior. Therefore, wearing the marking was protected concerted activity under Section 7.

To be protected under Section 7 the activity needs to be (1) concerted and (2) engaged in for the purpose of “mutual aid or protection.” The Board held an individual employee’s actions are ‘concerted’ within the meaning of Section 7 if there is a ‘logical outgrowth’ of employees’ prior or ongoing protected concerted activity.”

In *Home Depot*, the Board held the employee’s refusal to remove the “BLM” marking was “concerted” because it was closely linked to the prior complaints about racial discrimination. Additionally, the actions were for “mutual aid or protection” when the employees discussed concerns about the racially discriminatory conduct towards black employees with management.

Home Depot, USA, cont.

- The Board rejected Home Depot's "special circumstances" defense
- Member Kaplan's Dissent
 - Disagreed that the marking was "concerted" or for "mutual aid or protection"
 - "logical outgrowth theory" is not applicable absent a "plainly evident" connection

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Home Depot argued in defense that even if the Act protected the BLM marking, "special circumstances" allowed for the company to instruct the employee to remove what it considered a controversial message. Home Depot raised concerns of public image, employee safety, and employee dissension in support of its decision. The Board's majority rejected each of these arguments, explaining that (1) Home Depot allowed some personalization of the aprons, (this goes back to the earlier example of the Duke and UNC buttons on uniforms), (2) there was also no concrete, imminent safety risk from customers, and (3) employee conflict was not a sufficient concern absent obscene or objectively offensive language.

The lone Republican appointee on the Board at the time, Marvin Kaplan dissented from the opinion because he felt the BLM marking was not "concerted" or for "mutual aid or protection" and therefore, Home Depot should have been able to legitimately direct the employee to remove the marking. He reasoned that the logical outgrowth theory is not applicable absent a "plainly evident" connection between protected, concerted activity and the challenged activity, which Kaplan found was lacking in this case. He also reasoned that

Black Lives Matter is a global organization that is not focused on workplace discrimination issues, but rather community, political, and societal issues, specifically police brutality.

Takeaways from *Home Depot*

- Workplace activity connected to a societal or political cause could be subject to the NLRB's protection where it has ANY temporal or subjective connection to ANY workplace complaint or dispute

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Under the *Home Depot* ruling, employers faced with any workplace complaint, even if only a single employee is involved, must account for the potential that the Board will deem purely individual employee activity as protected.

Also, workplace activity linked to societal or political causes are now subject to labor law protection where they have any temporal or subjective connection to a workplace complaint or dispute. Employers should expect the Board to reject most “special circumstances” justifications for restricting employee messaging or other activities even in customer-facing areas.

Social Media Postings

- Employee social media posts about wages, hours, and other terms and conditions of employment ARE typically protected

Employee social media posts that discuss wages, hours, and other terms and conditions of employment are protected if they are concerted and engaged in for mutual aid or protection. Importantly, the Board has consistently held that concerted activity directed toward supervisory conduct, such as “rude, belligerent, and overbearing behavior” which directly affects the employees' work, constitutes protected activity under the Act. *Arrow Electric Co.*, 323 NLRB 968, 970 (1997).

Social Media Postings

- Pier Sixty LLC, 362 NLRB 505 (2015)
 - When does “abusive” conduct towards employers on social media lose its protection?
 - Totality of the circumstances test
 - 9 factors

Pier Sixty LLC Factors

1. Whether the record contained any evidence of the employer's hostility toward the protected activity;
2. Whether the employer provoked the employee's conduct;
3. Whether the employee's conduct was impulsive or deliberate;
4. The location of the employee's post;
5. The subject matter of the post;
6. The nature of the post;
7. Whether the employer considered language similar to that used by the employee to be offensive;
8. Whether the employer maintained a specific rule prohibiting the language at issue; and
9. Whether the discipline imposed was typical for similar violations.

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In the case, *Pier Sixty*, was a catering service company in New York that was undergoing a union organizing campaign. The campaign started in part because of concerns that management repeatedly treated the employees disrespectfully and in an undignified manner. Two days before the union election, a supervisor named Bob approached three servers and yelled at them during an event to “spread out” and stop chitchatting. Bob, the supervisor, made the statement in front of guests. After this incident, one of the servers that was yelled at took a break and made a posting on his personal Facebook page, which was visible to his Facebook “friends,” which included some co workers.

**“Bob is such a NASTY
MOTHER F*CKER don’t know
how to talk to people!!!!!!
F*ck his mother and his
entire f*cking family!!!!
What a LOSER!!!! Vote YES
for the UNION!!!!!!”**



YES!!! Protected!!!

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The Board held that the posting was directed at the supervisor who mistreated him and sought redress through the upcoming union election, so it was protected concerted activity. Surprisingly, the Board found that the comments were not so egregious as to exceed the Act's protection and all 9 of the factors weighed in the employee's favor. The Board found the employer was hostile towards the employees' union activity, the employee found the supervisor's comments in front of guests disrespectful, and the employee's reaction was impulsive. Importantly, the Board found that the comments did not interrupt the employer's work environment or its relationship with its customers and the overwhelming evidence established that profanity was tolerated throughout the workplace. Given the totality of the circumstances, the Board held the employee's termination was unlawful.

Examples of Concerted Activity that is NOT Protected

- The NLRA does NOT protect employees who engage in:
 - Secondary boycotts
 - Work slow-downs or intermittent strikes
 - Picket-line violence

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The Act generally prohibits employers from retaliating against employees for engaging in concerted activity. However, not all concerted activity is protected by the Act. For example, the Act does not protect employees who engage in:

- Secondary boycotts, (which is a pressure tactic where a union boycotts a neutral third-party company that does business with the employer involved in the labor dispute). For example, a union is on strike against a construction contractor. The union then urges the public to boycott a different, neutral company that provides building materials to the construction contractor. The goal is to pressure the neutral company to stop doing business with the construction contractor, which in turn pressures the construction contractor to cave in to what the union wants. This is an unlawful secondary boycott and violates Section 8(b)(4) of the Act.
- Work slow-downs or intermittent strikes. A work slow-down is where employees refuse to work on certain assigned tasks while still accepting pay or while remaining on the employer's property. That is referred to as a partial strike, and it is unprotected. The Act allows employees to withhold labor in a full strike, but not partial intermittent strikes or work slowdowns. The reason is the employees are exerting economic pressure on the employer while still being paid and without risking their full job loss.
- Picket-line violence is not protected.

What else can interfere with Section 7 rights?

Stericycle, 372 NLRB No. 113 (2023)

- Overly broad rules, policies and practices that reasonably chill the exercise of Section 7 rights are **UNLAWFUL**
- Rule or policy that is ambiguous as to Section 7 application and contains no limiting language or context that clarifies otherwise is **UNLAWFUL**

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Employers need to revisit their work rules and policies in their employee handbooks to ensure noting chills employees in the exercise of their Section 7 rights. The Board’s decision in the *Stericycle* case allows employers to promulgate and maintain workplace rules only as long as they are narrowly tailored to “advance legitimate and substantial business interests,” and minimize the risks of interfering with workers’ rights to act collectively.

A policy or rule is presumptively unlawful to maintain if an employee could reasonably interpret it to have a coercive meaning that in any way limits Section 7 rights to engage in concerted activity.

The Board looks closely at confidentiality, non-disparagement, and social media policies to determine if they “have a reasonable tendency to chill employees from exercising their Section 7 rights when viewed from the perspective of an employee who is economically dependent on the employer and who

contemplates engaging in protected concerted activity.”

- “Where the language is ambiguous and may be misinterpreted by the employees in such a way as to cause them to refrain from exercising their statutory rights, then the rule is invalid even if interpreted lawfully by the employer in practice.”
- Employers can rebut the presumption that a rule is unlawful by proving that it advances legitimate and substantial business interests that cannot be achieved by a more narrowly tailored rule.

Tips and Final Thoughts

- When determining whether an employee's activity is protected under Section 7, the conduct must be "both 'concerted' and engaged in for the purpose of 'mutual aid or protection.'"
 - Concerted- engaged in with or on the authority of other employees, and not solely by and on behalf of the employee himself
 - Mutual aid or protection- employee(s) involved are seeking to improve terms and conditions of employment or otherwise improve their lot as employees



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