

NLRA-What Do Union Rules Have To Do With A Non-Union Environment?

What possible relevance could the National Labor Relations Act (NLRA), the federal law that guarantees employees the right to organize (establish unions), have to do with non-union workplaces? Potentially, a lot. Many non-union employers are surprised to learn that NLRA requirements are frequently applicable in their workplaces. A few examples to keep in mind are discussed below. Contact your attorney for more detailed information or guidance regarding specific situations.

Joint Employer-Employee Committees/Activities

Many organizations seek to increase employee input and responsibility by establishing joint management-employee committees. However, the NLRB (National Labor Relations Board) has found some of these committees to be "employer assisted or dominated" labor organizations and therefore illegal (see the [Electromation case](#)). Employers are considered to "dominate" the committee if it designs and creates the committee, determines its function, and its ongoing existence is decided by the company. Employers therefore should be careful not to implement committees that make recommendations or that negotiate issues, such as terms of employment. Committees that simply gather information may be appropriate.

Policies Prohibiting Discussions Involving Wages

Company policies that prohibit employee wage discussions may violate the NLRA, as they have been interpreted to unlawfully interfere with employees' rights to engage in organized and concerted activity.

Concerted Activity

The NLRA provides employees the right to participate in "concerted activity" for collective bargaining or other mutual aid or protection. Therefore, a group of employees that complains to management regarding the terms and conditions of employment would be protected. Further, an employee who acts alone may also be protected if she acts on behalf of others.

Use of Communication Systems

Employers have long been aware of the potential problems in allowing employees to use company bulletin boards for non-business communication yet restricting union postings. The electronic workplace has raised similar issues regarding the use of e-mail, the internet, voice mail, etc. The NLRA requires that rules regarding use of communication may not discriminate against union activities.

Investigatory Interviews

In 2004, the NLRB overruled its decision in [Epilepsy Foundation of N.E. Ohio](#) that found that non-union employees have the same right as union workers to request and have a co-worker present during an investigatory interview that could lead to discipline. Under the 2004 decision, non-union employees have no right to have a co-worker present at investigating meetings. Confused? You probably should be. This is the 4th time in 20 years that the NLRB has changed its mind on this issue. Better stay tuned.