

## The National Labor Relations Act: An Equal Opportunity Statute

08/29/16

Did you know there are sections of the National Labor Relations Act (NLRA) which apply to all employers, even those without unions? Concerted activity—simply put, the legal concept that permit employees to discuss their working conditions—is applicable to all business entities with employees. The question is: how does the NLRA define concerted activity and how does it affect every employer? We will give you the answer here in a three-part series that explains how concerted activity is permitted in every workplace.

1. Can an employer have a policy which prohibits employees from discussing their compensation and benefits?
2. Can an employer have a policy that restricts what employees can post on social media?
3. When an employer must conduct an investigation, can the employer insist on confidentiality?

We begin in today's post with the answer to question #1.

### **Can you stop your employees from discussing the merit bonus you are going to distribute at the end of the year?**

The short answer is NO. In fact, this is just one example; you should not stop employees from discussing any type of compensation. Under Section 7 of the NLRA, which applies to even non-union employees, employees have a right to discuss compensation and any other condition of their employment. Specifically, the text of Section 7 is as follows:

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to *engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection*, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment."

The protective language is underlined. Employees are allowed to engage in activities for the purpose of mutual aid or protection and this includes discussing what they are paid. *Prohibitions on the discussions concerning compensation (including benefits and bonuses) are considered unfair labor practices under the NLRA.*

Under Section 8(a) of the NLRA, an employer who interferes with, restrains, or coerces employees in the exercise of their rights to engage in concerted activity creates an unfair labor practice.

In 2003, in the case of *Custom Cut, Inc. v Southwest Regional Council of Carpenters, United Brotherhood of Carpenters & Joiners of America*, the National Labor Relations Board found that the employer's policy, which prohibited employees from discussing their wages among themselves and stipulated that the employer would not discuss wages with the employees, was a violation of the NLRA. An employer, by mandating a rule prohibiting employees from discussing their earnings, is interfering with the employee's rights to engage in concerted activity. Therefore, the policy creates an unfair labor practice.

Moreover, rules prohibiting employees from disclosing or discussing “confidential” information are unlawfully broad if they could be reasonably construed by employees to prohibit them from discussing information concerning terms and conditions of employment, including wages.

So when you pay that merit bonus at the end of the year, do just that: provide the bonus and don’t comment on whether your employees can discuss the bonus.

Stay tuned, next week, can you limit when and what an employee posts on social media?

**Attorney**

- Tracy Armstrong