

LABOR LAW UPDATE

Action Items in Response to NLRB Activism

- *Train your supervisors to recognize signs of unionization.*
- *Review your employee handbook from a labor (not just employment) perspective.*
- *Have a union response action plan on hand and ready to go.*

We informed our clients previously that the National Labor Relations Board (the “NLRB”) has issued several anti-employer decisions, has adopted new rules governing union representation elections and has promulgated a new rule that will require all employers to post a Notice of Employee Rights under the National Labor Relations Act (the “Act”).

We believe that because organized labor’s Congressional allies were not able to pass the so-called “card check” law, the NLRB is actively deciding cases and implementing rules that will make it decidedly easier for unions to file Petitions for Representations and win the ensuing elections.

We have provided some guidance in this alert concerning a course of action that we believe employers should take.

PROBLEM 1: Increased Chance of Union Activity Based on Required Notices

Beginning April 30, 2012, every healthcare employer will have to post in the workplace a Notice of Employee Rights under the Act. This posting requirement was initially slated to take effect in November 2011, but has been postponed twice, and currently will take effect April 30, 2012. We believe this posting could cause employees who would otherwise never have thought about forming a union to call the NLRB for a “how-to.” (You can download a copy of the Employee Rights Notice from our website www.RolfLaw.com/Labor, although employers should not post it until April 30.)

ACTION: Train your supervisors to recognize signs of unionization. For a limited time, we have posted some common areas to consider on our website at www.RolfLaw.com/Labor. You should also consider having a labor relations specialist instruct your supervisors on how they may and may not act and what they may or may not say in the event a union targets your employees. We provide such training to our clients, and believe that it can be invaluable in effectively addressing emerging thoughts of unionization in your business.

PROBLEM 2: Having Your Employee Handbooks Used Against You

One recent NLRB decision held that an employer whose handbook contains unlawful provisions could have a union representation or decertification election overturned for merely maintaining an improper rule, whether or not that employer ever enforced the rule. For example, an over-broad policy prohibiting solicitation even during break time could be deemed unlawful and result in an election being overturned. Similarly, in reviewing clients’ handbooks, we have seen numerous over-broad policies prohibiting

employees from discussing wages and/or benefits or from “disparaging” management, that would be deemed unlawful by the NLRB.

ACTION: Healthcare employers understand that the laws to which they are subject are in a constant state of flux. That is why it is a very good, and fairly common, practice to have employee handbooks reviewed periodically by counsel well-versed in both employment and healthcare issues. However, employers should also make sure that the review includes identifying issues such as the ones noted above.

PROBLEM 3: Significantly Reduced Time Frame for Union-Free Campaigns

Beginning on April 30, 2012, new procedures for union representation elections will go into effect. These new procedures, recently adopted by the NLRB, will profoundly change the way elections are conducted and will make it far more difficult for employers to respond to the threat of unionization. For example, under the new procedures, elections typically will be held within 10 and 14 days of the filing of the petition; currently, the accepted time period is between 35 and 42 days. Under these new procedures, employers will have a VERY SHORT time to mount an effective union-free campaign.

ACTION: At the very first sign of union activity it will be critical to have ready a statement to distribute to employees that provides them a few essential facts about unions and unionization. Additionally, employers should consider mounting an aggressive union-free campaign including speeches to assembled employees, union-specific research and union-free campaign materials. Because federal labor law is very specific as to what employers can and cannot say – and because violations can result in having an election overturned (or worse – being ordered to recognize the union) – we recommend that you have counsel assist you in conducting your campaign.

PROBLEM 4: The Potential for Micro Units in LTC Facilities

Another recent decision by the NLRB is especially worrisome for healthcare employers. The Board’s 2011 decision in *Specialty Healthcare & Rehabilitation Center of Mobile*, allows unions to petition for “micro units,” i.e., bargaining units as small as two employees in one department. For example, a union can now file a petition to represent only dietary staff; then file a new petition for laundry; then another for direct care STNAs; and then another for housekeeping, etc. Worse yet, different unions can now file petitions in this manner leaving the employer with different unions representing different portions of its workforce all with labor contracts that expire at different times.

ACTION: Again, because the ability to organize “micro units” is expected to make it easier for unions to gain a foothold in your facility, your managers should be vigilant to recognize and report signs of union activity. Moreover, because unions will have the ability to select a small group of disaffected employees (e.g., dietary staff only), employers must ensure that *all* managers are well trained and handling employment issues effectively.

These steps do not address all of the NLRB's recent actions in part because they cannot; e.g., the NLRB is actively and continually developing law governing the relationship among employers, employees and organized labor. We anticipate additional changes in the coming months.

Please contact us if you would like further information or assistance with these matters, or if you have any questions regarding this alert.



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