

Northern New England

MONDAY MORNING MINUTE

April 14, 2014

National Labor Relations Board Continues to Scrutinize Employee Handbooks

Section 8(a)(1) of the National Labor Relations Act (“the NLRA”) protects the right of both unionized and non-unionized employees to engage in “protected concerted activity.” In an effort to protect this right, the National Labor Relations Board (“the NLRB”) continues to scrutinize employee handbooks for provisions that have a “chilling effect” on the exercise of protected concerted activity.

In its recent decision in Hills and Dales General Hospital, slip opinion 360 NLRB No 70 (April 1, 2014), the NLRB ruled that the following three provisions, included in an employer’s “values and standards of behavior” policy, were unlawful under the NLRA:

- A provision stating that employees were not to make “negative comments about our fellow team members” including coworkers and managers;
- A provision mandating that employees “will not engage in or listen to negativity or gossip” in the workplace; and
- A provision requiring employees to “represent [the employer] in the community in a positive and professional manner in every opportunity.”

According to the NLRB, these blanket prohibitions on “negative comments” and “negativity” are unlawfully overbroad and ambiguous, and have the potential to discourage employees from, for example, protesting unfair labor practices. Further, according to the NLRB, evidence of employee involvement in developing these handbook provisions was irrelevant as “employees might well endorse an unlawful rule, knowingly or not, but their consent or acquiescence cannot validate the rule.”

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As its decision in the Hills and Dales General Hospital demonstrates, the NLRB remains active and aggressive in its scrutiny of employee handbooks for compliance with Section 8(a)(1) of the NLRA. Employers are well advised to have their employee handbooks reviewed for NLRA compliance. Contact the attorneys in the Portsmouth, New Hampshire office of Jackson Lewis P.C. for assistance with this, or any other labor or employment law matter.

For additional information regarding this, or any other labor or employment law matter, please contact the attorneys in the Portsmouth, New Hampshire office of Jackson Lewis P.C.

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