

CLIENT ALERT: NLRB Announces it Will Robustly Enforce Protections of the National Labor Relations Act

On March 31, 2021, the Acting General Counsel of the National Labor Relations Board (“NLRB”) issued a **memorandum (GC 21-03)** (the “Memorandum”) to the regional field offices expressing his intent to vigorously and robustly enforce the provisions of the National Labor Relations Act (“NLRA”) protecting employees’ rights to engage in concerted activities for mutual aid or protection. While the Memorandum does not and cannot change existing law, it is an important reminder for employers that the NLRA does not just apply to union employees or to employees seeking to form or join a union.

Section 7 of the NLRA grants employees, including non-union employees, the right to engage in concerted activities for mutual aid or protection. While “concerted” generally means employees bonding together to improve wages and/or working conditions, it can sometimes mean nothing more than a speaker and a listener. There are even times when a single employee can be found to have engaged in concerted activities. Mutual aid or protection includes links between employee activities and matters concerning the workplace or matters concerning employees’ interests as employees.

The Memorandum references the increased prevalence of health and safety issues during the pandemic, as well as political and social justice activity where such activity has a direct nexus to employees’ interest as employees. The Memorandum references cases involving activities in support of the \$15.00 minimum wage, immigration crackdown protests, environmental objections, and similar political/social justice protests. It also references Division of Advice decisions finding discussions of racial discrimination and workplace health and safety to be inherently concerted.

As an example of this new approach to robust enforcement of the NLRA’s protection of Section 7 rights, the NLRB announced that it was issuing an unfair labor practice complaint (absent settlement) against Amazon alleging that Amazon illegally retaliated against two designers in their headquarters office by firing them for engaging in concerted activities. The designers wanted Amazon to do more to address climate change and were part of an employee group called Amazon Employees for Climate Justice. The designers also wanted Amazon to address warehouse safety concerns and shortly before being terminated had organized an internal event for warehouse workers to speak to tech employees about workplace conditions. Amazon contends that the employees violated its External Communications Policy by speaking publicly about the business.

What does this mean for employers? First, the NLRB under the Biden administration will step up enforcement of the NLRA’s protection for employees who engage in concerted activity for mutual aid or protection and will seek to expand its reach. (The Memorandum implicitly criticizes two decisions issued under the Trump administration for narrowing the reach of Section 7 activities.) Second, employers must exercise care when considering the discipline or discharge of employees who have engaged in activities related to health, safety, political or social justice issues. Whether or not a contemplated disciplinary or discharge decision is or is not related to these potentially concerted activities, the employer should consider the potential exposure under the NLRA.

Employers are advised to consult with their MBJ attorney to address potential liability under the NLRA, as well as other employment and labor law concerns.

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