

ABOUT TO REOPEN YOUR OFFICE? PAY ATTENTION TO LABOR LAW



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Your employees are talking. Over the past few months, business operations have been sustained through virtual meetings, phone calls, and emails. The COVID-19 response has required employees to find multiple different ways of staying in touch with one another.

Social distancing has created a great deal of uncertainty and anxiety for everyone. You are under a great deal of pressure right now, but so are your employees. They are worried about their medical wellbeing, returning to the office, and whether their role in your organization will change.

So where will employees inevitably voice these concerns? Their peers. That means you need to brush up on the basics of labor law – even if your employees are not unionized.

Why Should You Care?

Most people associate labor law with unions. Since union membership has been in decline, it can be tempting to overlook the importance of labor law compliance in your workforce. Now is not the time to adopt such a strategy.

One of the most important statutes in the area of labor law is the National Labor Relations Act (“NLRA”). The NLRA is comprehensive. Even non-unionized employees have rights and protections under the NLRA.

Thanks to the NLRA, we have the National Labor Relations Board (“NLRB”). The NLRB is a federal agency with a great deal of authority. When employees believe that their NLRA rights have been violated, they can take their grievance to the NLRB.

Once that happens, the NLRB has the power to initiate an investigation. NLRB investigators can require employers to comply with intensive investigation. The NLRB also has the power to litigate against an employer on behalf of complaining employee(s). Employers should respect the NLRB because it is an experienced opponent with a great deal of authority.

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What Impacts Might COVID-19 Have?

When state and local governments started implementing measures to “flatten the curve” and prevent extensive COVID-19 infections, many businesses responded by creating a work-from-home workforce. Those restrictions are now starting to loosen.

As social distancing rules ease, employee anxiety is likely increasing. Your work-from-home workforce has been perfecting ways to communicate with one another. Many have been in constant contact while working in the era of social distancing.

The odds are that your employees have been using those forms of technology to communicate with one another about their concerns with returning to the office. Employees communicating concerns to one another can have serious implications under the NLRA.

Why Does Employee Communication Matter?

As mentioned above, the NLRA protects employees even if they are not union members. One of the NLRA’s protections relates to “concerted activity.” Thanks to the NLRA, employees have the right to discuss and address workplace concerns with their fellow coworkers. Employers can be accused of unfair labor practices if they do not respect the NLRA protections afforded to concerted activities.

Discussing work conditions and hazards can be considered a concerted activity. That is a big deal because employees across the nation have a glaring workplace concern right now – COVID-19. Concerned employees are communicating and sharing information about COVID-19, which they likely see as a workplace hazard. In so doing, concerned employees may find themselves entitled to NLRA protection. Failure to respect NLRA protections will result in substantial problems with the NLRB.

What Types of Unlawful Practices Should Employers Avoid?

Employers are not bound to encounter legal issues just because their employees are engaging in protected actions. Issues arise when employers respond to those practices incorrectly. Liability under the NLRA can become a reality when employers interfere with, restrain, or coerce employees participating in protected activities.

Interference, restraint, and coercion can appear in subtle ways. A valid NLRB complaint might arise if one of your supervisors make statements with overt or implied threats to employees who are participating in concerted activities. This seems simple when taken at face value, but becomes more complex in reality. Right now, your supervisors are probably fielding questions from nervous employees asking complicated questions about office safety. Each of these transactions presents a new opportunity for error, especially if the supervisors have not been instructed on the range of potential legal issues that can arise based on their responses.

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The current public health situation means more employees are engaging in communications that may be entitled to NLRA protections. Therefore, it is highly important to make sure that you are providing your workforce with the policies and training necessary to prevent a wave of NLRA liability. Your employees are talking – make sure your organization knows how to respond.

Visit our [COVID-19 Hub](#) for ongoing updates.

COVID-19 Task Force

Authors:

James S. Fielding, Associate – Gordon Rees Scully Mansukhani Gordon
Chad A. Shultz, Partner – Gordon Rees Scully Mansukhani Gordon

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